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सत्यमेव जयते

भारत का राजपत्र
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सं. 25] नई दिल्ली, जून 16—जून 22, 2013, शनिवार/ज्येष्ठ 26—आषाढ़ 1, 1935
No. 25] NEW DELHI, JUNE 16—JUNE 22, 2013, SATURDAY/JYAISTHA 26—ASADHA 1, 1935

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रलयों (रक्षा मंत्रलय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 13 जून, 2013

का.आ. 1152.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राष्ट्रीय राजधानी क्षेत्र दिल्ली में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित मामले जो कि उन्हें केन्द्रीय अन्वेषण ब्यूरो द्वारा सौंपे गए है परीक्षण न्यायालयों तथा अपीलों/पुनरीक्षणों या विधि द्वारा स्थापित पुनरीक्षण या अपीलीय न्यायालयों में इन मामलों से उत्पन्न अन्य मामलों का संचालन करने के लिए श्री अजय कुमार गुप्ता, वकील को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फ. सं. 225/15/2013-एवीडी-II]
राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 13th June, 2013

S.O. 1152.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Ajay Kumar Gupta, Advocate as Special Public Prosecutor for conducting prosecution of cases instituted by Delhi Special Police Establishment in the National Capital Territory of Delhi entrusted to him by the Central Bureau of Investigation in the trial courts and appeals/revisions or other matters arising out of the said cases in revisional or appellate courts established by law.

[F. No. 225/15/2013-AVD-II]

RAJIV JAIN, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 14 जून, 2013

का.आ. 1153 —राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9 के उप-खंड (1) और (2) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (ङ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, ओरियंटल बैंक आफ कामर्स के विशेष सहायक श्री किंगशुक भट्टाचार्य (जन्म तिथि 20011958) को पद का प्रभार संभालने की तारीख से तीन वर्ष की अवधि के लिए अथवा ओरियंटल बैंक आफ कामर्स के कर्मकार कर्मचारी के रूप में उनके पदभार छोड़ने तक अथवा अगले आदेशों तक, जो भी पहले हो, ओरियंटल बैंक आफ कामर्स के निदेशक मण्डल में कर्मकार कर्मचारी निदेशक के रूप में नियुक्त करती है।

[फा. सं. 6/23/2012-बीओ-I]

मनीष कुमार, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 14th June, 2013

S.O. 1153.—In exercise of the powers conferred by clause (e) of Sub-section 3 Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with Sub-clause (1) & (2) of Clause 9 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby appoints Shri Kingshuk Bhattacharya (Date of Birth: 20.01.1958), Special Assistant, Oriental Bank of Commerce as Workmen Employee Director on the Board of Directors of Oriental Bank of Commerce for a period of three years with effect from the date of his taking over the charge of the post or until he ceases to be a Workmen Employee of Oriental Bank of Commerce or till further orders, whichever is the earliest.

[F. No. 6/23/2012-BO-I]

MANISH KUMAR, Under Secy.

नई दिल्ली, 17 जून, 2013

का.आ. 1154 —जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, भारतीय जीवन बीमा निगम (एलआईसी) के वर्तमान प्रभारी श्री थॉमस मैथ्यू टी. के स्थान पर एलआईसी के प्रबंध निदेशक श्री एस॰ के॰ रॉय को उनके कार्य-भार ग्रहण करने की तारीख से पांच वर्ष की अवधि के लिए या दिनांक 31072018 तक अर्थात् उनके अधिवार्षिता की आयु प्राप्त करने की तिथि तक या अगले आदेशों तक, जो भी पहले हो, भारतीय जीवन बीमा निगम का अध्यक्ष नियुक्त करती है।

[फा. सं. ए.-15011/10/2012-बीमा-I]

प्रिया कुमार, निदेशक (बीमा)

New Delhi, the 17th June, 2013

S.O. 1154.—In exercise of the powers conferred by section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Shri S.K. Roy, Managing Director, Life Insurance Corporation of India (LIC) as Chairman, LIC vice Sh. Thomas Mathew T, Current-In-Charge for a period of five years with effect from the date of his taking over the charge of the post or till 31.7.2018 *i.e.* the date of his attaining the age of superannuation or until further orders, whichever is the earliest.

[F. No. A-15011/10/2012-Ins.-I]

PRIYA KUMAR, Director (Insurance)

आदेश

नई दिल्ली, 19 दिसम्बर, 2012

का.आ. 1155 —जबकि केन्द्र सरकार ने, वर्ष 2002 में, भारतीय औद्योगिक विकास बैंक (भारतीय लघु उद्योग विकास बैंक, भारतीय औद्योगिक निवेश बैंक एवं एक्जिम बैंक सहित) द्वारा लिए गए ऋणों हेतु राष्ट्रीय ब्याज ऋण दीर्घावधि परिचालन [(एनआईसी) (एलटीओ)] के प्रति देयताओं और इसके साथ-साथ आईबीआरडी बकाया ऋण व्यवस्था के प्रति देयता को अपने अधिकार में लिया था। भारतीय औद्योगिक विकास बैंक के मामले में कुल राशि 2,13050 करोड़ रुपये (मात्र दो हजार एक सौ तीस करोड़ और पचास लाख रुपये) थी, जिसमें एनआईसी (एलटीओ) के लिए 1,15702 करोड़ रुपये (मात्र एक हजार एक सौ सत्तावन करोड़ एवं दो लाख रुपये) और आईबीआरडी ऋण व्यवस्था के प्रति 97348 करोड़ रुपए (मात्र नौ सौ तिहतर करोड़ एवं अड़तालीस लाख रुपये) थे। भारत सरकार द्वारा इन देयताओं को अपने अधिकार में लिया गया था तथा इसके बदले में बैंक ने भारत सरकार को दो आईडीबीआई ओएमएनआई बांड शृंखलाएं-1 (टीयर-I) जारी की थी जो क्रमशः 1,15702 करोड़ रुपये एवं 97348 करोड़ रुपये के मूल्य की थी और जिन पर क्रमशः 8% एवं 188 % की दर पर ब्याज लगाया गया था और जो 30 मार्च, 2022 एवं 31 मार्च, 2022 को परिपक्व होनी थी। इसके अलावा, जबकि इन बांडों की परिवर्तनीयता संबंधी धारा में यह व्यवस्था है कि ये बांड इक्विटी में परिवर्तनीय है अथवा इन्हें आगे 20 वर्ष की अवधि के लिए उस समय उपयुक्त ब्याज दर पर पुनर्निर्धारित किया जा सकता है। अतः आईडीबीआई बैंक लिमिटेड ने इन बांडों को इक्विटी में परिवर्तित करने का अनुरोध किया था।

2 जबकि केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने और विद्यमान परिस्थितियों को ध्यान में रखने के पश्चात् इस बात से सहमत है कि उपर्युक्त बांडों का परिवर्तन इक्विटी के रूप में करना लेक्क हित में है और इस परिवर्तन से बैंक की ब्याज देयता कम होगी जिससे इसकी लाभप्रदता में सुधार होगा और इसके साथ-साथ बैंक के शेयर-मूल्य में भी वृद्धि होगी।

3 अतः कंपनी अधिनियम, 1956 (1956 का 1) की धारा 81 की उप-धारा (4) द्वारा प्रदत्त शक्तियों के अनुसरण में, अब केन्द्रीय सरकार, एतद्द्वारा यह निदेश देती है कि 2,13050 करोड़ रुपए (मात्र दो हजार एक सौ तीस करोड़ एवं पचास लाख रुपये) तक के टीयर-I पूंजी बांड

इक्विटी पूंजी में परिवर्तित किए जाएं और आईडीबीआई बैंक द्वारा उक्त परिवर्तन सेबी के दिशा-निर्देशों के अनुसार तय की गई दर पर दस-दस रुपये अंकित मूल्य के ईक्विटी शेयर जारी करके किया जाएगा।

[फ. सं. 10/11/2011-बीओए]
एम. एम. दौल, अवर सचिव

ORDER

New Delhi, the 19th December, 2012

S.O. 1155.—Whereas Central Government had, in 2002, taken over liabilities towards National Interest Credit-Long Term Operations [NIC (LTO)] for the loans availed by Industrial Development Bank of India (alongwith Small Industries Development Bank of India, Industrial Investment Bank of India and Exim Bank) and also liability towards IBRD outstanding lines of credit. The total amount in case of Industrial Development Bank of India was Rs. 2,130.50 crore (Rs. Two thousand one hundred thirty crore and fifty lacs only), comprising Rs. 1,157.02 crore (Rs. One thousand one hundred fifty seven crore and two lacs only) for NIC (LTO) and Rs. 973.48 crore (Rs. Nine hundred seventy three crore and forty eight lacs only) towards IBRD lines of credit. These liabilities were taken over by GoI and, in turn, the Bank issued to GoI two IDBI, OMNI bonds Series-I (Tier-I) for an aggregate value of Rs. 1,157.02 crore and Rs. 973.48 crore carrying interest thereon @ 8% and 11.88% maturing on March 30, 2022 and March 31, 2022 respectively. And whereas the convertibility clause of these bonds provides that these bonds are convertible into equity or can be rolled over for a period of another 20 years at an interest rate that may be appropriate at that time and, as such, IDBI Bank Ltd. requested for conversion of these bonds into equity.

2. And whereas the Central Government, after consultation with the Reserve Bank of India and having due regard to the prevailing circumstances, is satisfied that conversion of the above bonds into equity is in the public interest and this conversion will reduce the interest liability of the Bank thereby improving its profitability and simultaneously will increase the share price of the Bank as well.

3. Now, therefor, in pursuance of the powers conferred by Sub-section (4) of Section 81 of the Companies Act, 1956 (1 of 1956), the Central Government hereby directs that the Tier I Capital Bonds to the tune of Rs. 2,130.50 crore (Rs. Two thousand one hundred thirty crore and fifty lacs only) be converted into Equity Capital and the said conversion will be effected by the IDBI Bank through issue of equity shares of face value of Rs. 10 (Rs. Ten) each at the rate to be decided as per SEBI guidelines.

[F. No. 10/11/2011-BOA]
M. M. DAWLA, Under Secy.

युवा कार्यक्रम एवं खेल मंत्रालय

नई दिल्ली, 12 जून, 2013

का.आ. 1156.—केन्द्रीय सरकार एतद्द्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप नियम (4) के अनुसरण में युवा कार्यक्रम और खेल मंत्रालय के स्वायत्तशासी कार्यालय भारतीय खेल प्राधिकरण, चौधरी देवी लाल उत्तरी केन्द्र, सोनीपत (हरियाणा), जिसके 80% से अधिक कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञन प्राप्त कर लिया है, को अधिसूचित करती है।

[मि. सं. ई-11011/2/2008-हि. ए.]
थंगलेमलियन, उप सचिव

MINISTRY OF YOUTH AFFAIRS AND SPORTS

New Delhi, the 12th June, 2013

S.O. 1156.—In pursuance of sub-rule (4) of Rule of 10 of Official Language (use for official purpose of the Union) Rule 1976, the Central Government hereby notifies Sports Authority of India, Chaudhary Devi Lal Northen Centre, Sonipat an autonomous office of Ministry of Youth Affairs & Sports, whereof more than 80% staff have acquired working knowledge of Hindi.

[F. No. E-11011/2/2008-H.U.]
THANGLEMLIAN, Dy. Secy.

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

(राजभाषा यूनिट)

नई दिल्ली, 14 जून, 2013

का.आ. 1157 —केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम 4 के अनुसरण में, मानव संसाधन विकास मंत्रालय (स्कूल शिक्षा एवं साक्षरता विभाग) के अंतर्गत निम्नलिखित जवाहर नवोदय विद्यालयों को, ऐसे कार्यालयों के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारी-वृन्द ने हिन्दी का कार्यसाधक ज्ञन प्राप्त कर लिया है, अधिसूचित करती है:

क्रम सं.	विद्यालय का नाम तथा पता
1	जवाहर नवोदय विद्यालय, पोरबंदर (गुजरात)
2	जवाहर नवोदय विद्यालय, बुचरवाडा, दीव (दमन एवं दीव)

[सं. 11011-1/2013-ब्रा.भा.ए.]
अनन्त कुमार सिंह, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

(O. L. UNIT)

New Delhi, the 14th June, 2013

S.O. 1157.—In pursuance of sub- rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following Jawahar Navodaya Vidyalayas of Navodaya Vidyalaya Samiti under the Ministry of Human Resource Development (Department of School Education & Literacy) as offices, whose more than 80% members of the staff have acquired working knowledge of Hindi:

Sl. No.	Name and address of the School
1.	Jawahar Navodaya Vidyalaya, Porbander (Gujarat)

2. Jawahar Navodaya Vidyalaya, Butcherwada, Diu (Daman & Diu)

[No. 11011-1/2013-O.L.U.]

ANANT KUMAR SINGH, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय
(उपभोक्ता मामले विभाग)
(भारतीय मानक ब्यूरो)

नई दिल्ली 14 जून, 2013

का.आ. 1158 —भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक (कों) में संशोधन किया गया/किये गये हैः—

अनुसूची

संशोधित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)
आई एस 10918:1984	02, मई 2013	31-05-2013

इस भारतीय संशोधन की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई, दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ ईटी 11/टी-35]

आर. सी. मैथ्यू, वैज्ञानिक 'एफ एवं प्रमुख (विद्युत तकनीकी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
(Department of Consumer Affairs)
(BUREAU OF INDIAN STANDARDS)

New Delhi, the 14th June, 2013

S.O. 1158.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standard hereby notifies that amendment to the Indian Standards, particulars of which is given in the Schedule hereto annexed has been issued:

SCHEDULE

No. & Year of the Indian Standards	No. & Year of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)
IS 10918:1984 Specification for vented type nickel cadmium batteries	02, May 2013	31-05-2013

Copy of this Amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. ET 11/T-35]

R. C. MATHEW, Scientist 'F' & Head (Electrotechnical)

कोयला मंत्रालय

नई दिल्ली, 18 जून, 2013

का.आ. 1159.—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त किए जाने की संभावना है;

और, रेखांक संख्या आरईवी/09/2012, तारीख 19 अक्तूबर, 2012 का, जिसमें उक्त अनुसूची में वर्णित भूमि के क्षेत्र का अन्तर्विष्ट है, निरीक्षण, सेंट्रल कोलफील्ड्स लिमिटेड (भूमि और राजस्व विभाग), दरभंगा हाउस, रांची-834029 (झारखंड) के कार्यालय में या महाप्रबंधक, राजहरा क्षेत्र, दरभंगा हाउस, रांची (झारखंड) उपायुक्त, जिला चतरा (झारखंड) और उपायुक्त, जिला हजारीबाग (झारखंड) के कार्यालय में या महाप्रबंधक (खोज प्रभाग), आरआई III, केन्द्रीय खान योजना और डिजाइन संस्थान लिमिटेड, गोंडवाना प्लेस, कांके रोड़, रांची झारखंड के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता-700001 के कार्यालय में किया जा सकेगा।

अतः अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अनुसूची में वर्णित भूमि में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है।

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति इस अधिसूचना के प्रकाशन की तारीख से नब्बे दिन की अवधि के भीतर महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, राजहरा क्षेत्र, जिला चतरा (झारखंड) या महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, (भूमि और राजस्व विभाग), दरभंगा हाउस, रांची-834029 (झारखंड) के कार्यालय में—

(i) उक्त अधिसूचना की धारा 4 की उप-धारा (3) के अधीन की गई किसी कार्रवाई से हुई क्षति या होने वाली सम्भाव्य क्षति के लिए अधिनियम की धारा 6 के अधीन प्रतिकर का दावा कर सकेगा; अथवा

(ii) अधिनियम की धारा 13 की उप-धारा (1) के अधीन पूर्वेक्षण अनुज्ञप्तियों के प्रभावहीन होने के संबंध में या अधिनियम की धारा 13 की उप-धारा (4) के अधीन खनन पट्टे के प्रभावहीन होने के लिए प्रतिकर का दावा कर सकेगा और उक्त अधिनियम की धारा 13 की उपधारा (1) के खंड (i) से (iv) में विनिर्दिष्ट मदों के संबंध में उपगत व्यय दर्शित करने के लिए पूर्वोक्त भूमि से संबंधित मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा।

अनुसूची
पचरा और पचरा साउथ कोल माइनिंग ब्लॉक
जिला-हजारीबाग और चतरा (झारखंड)

(रेखांक संख्या आरईवी/09/2012, तारीख 19 अक्तूबर, 2012)

सभी अधिकार:

क्र. सं.	मौजा/ग्राम	थाना	ग्राम/थाना संख्या	जिला का नाम	क्षेत्र (एकड़ में)	टिप्पणी
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	चट्टीबरियातु	बड़कागांव	14	हजारीबाग	2040	भाग
2	जोरदाग	बड़कागांव	15	हजारीबाग	5480	भाग
3	नावाखाप	टंडवा	47	चतरा	1390	भाग
4	पचन्द्व	टंडवा	48	चतरा	7221	पूर्ण
5	सिझुआ	टंडवा	53	चतरा	5618	पूर्ण
6	उरसु	टंडवा	54	चतरा	1581	भाग
7	बुकरू	टंडवा	55	चतरा	9910	भाग

कुल: 333150 एकड़ (लगभग)
या 134878 हेक्टेयर (लगभग)

ग्राम चट्टीबरियातु में अधिगृहीत किए जाने के आशय के प्लाट संख्यांक: 5(भाग), 6(भाग), 7(भाग), 8 से 60, 61(भाग), 62, 63, 64(भाग), 69(भाग), 70(भाग), 71(भाग), 73(भाग), 74(भाग), 75 से 103, 104(भाग), 105, 106(भाग), 107(भाग), 114(भाग), 115(भाग), 116, 117(भाग), 2016, 2023 से 2066।

ग्राम जोरदाग में अधिगृहीत किए जाने के आशय के प्लाट संख्यांक: 1, 2(भाग), 3, 4, 12(भाग), 615(भाग), 616(भाग), 617 से 621, 622(भाग), 623 से 636, 2014, 2015, 2016, 2017, 2022, 2023, 2024(भाग)।

ग्राम नावाखाप में अधिगृहीत किए जाने के आशय के प्लाट संख्यांक: 24(भाग), 35(भाग), 37(भाग), 45(भाग), 46(भाग), 49(भाग), 50 से 61, 62(भाग), 63 से 349, 350(भाग), 351, 352(भाग), 353, 354, 355(भाग), 377(भाग), 378(भाग), 382(भाग), 383, 387(भाग), 388(भाग), 389 से 416, 417(भाग), 457(भाग), 458(भाग), 459(भाग), 460(भाग), 461 से 779

ग्राम पचन्द्व में अधिगृहीत किए जाने के आशय के प्लाट संख्यांक: 1(भाग), 2 से 514, 515(भाग), 516 से 2418

ग्राम सिझुआ में अधिगृहीत किए जाने के आशय के प्लाट संख्यांक: 1(भाग), 2 से 1385, 1386(भाग), 1387 से 1390

ग्राम उरसु में अधिगृहित किए जाने के आशय के प्लाट संख्यांक: 585(भाग), 586 से 645

ग्राम बुरसु में अधिगृहीत किए जाने के आशय के प्लाट संख्यांक: 1 से 809, 810(भाग), 811(भाग), 812(भाग), 813, 814(भाग), 815(भाग), 817(भाग), 847(भाग), 849(भाग), 886, 887, 888, 889, 890(भाग), 891(भाग), 893 से 899, 900(भाग), 901 से 905, 906(भाग), 909(भाग), 911(भाग), 912 से 918, 919(भाग), 920(भाग), 986(भाग), 987(भाग), 988 से 1051, 1052(भाग), 1053(भाग), 1056(भाग), 1057(भाग), 1058(भाग), 1105 से 1112, 1115 से 1158, 1159(भाग), 1160(भाग), 1162(भाग), 1163 से 1178, 1179(भाग), 1180 से 1193, 1194(भाग), 1195(भाग), 1196(भाग), 1197(भाग), 1198, 1216 से 1226, 1227 (भाग), 1229, 1230, 1246, 1248(भाग), 1250(भाग), 1252 से 1261

सीमा वर्णन:

क-ख-ग रेखा बिंदु 'क से आरंभ होती है और ग्राम नावाखाप और सेरंदाग, पचन्द्व और बिंगलात सिझुआ और कुमारांग कलां, बुकरू और उरसु की पश्चिमी सम्मिलित सीमा के साथ-साथ और गड़्ही नाला के मध्य से होते हुए बिंदु 'ग पर मिलती है।

ग-घ रेखा, ग्राम बुकरू से होते हुए बिंदु 'घ पर मिलती है।

घ-ड़ रेखा बुकरू, जोरदाग, चट्टीबरियातु ग्रामों के आंशिक भाग से होते हुए बिंदु 'ड़ पर मिलती है।

ड़-क रेखा चट्टीबरियातु और नावाखाप ग्रामों के आंशिक भाग से होते हुए प्रारंभ बिंदु 'क पर मिलती है।

[फा. सं. 43015/10/2010-पीआरआईडब्ल्यू-I]

वी. एस. राणा, अवर सचिव

MINISTRY OF COAL

New Delhi, the 18th June, 2013

S.O. 1159.—Whereas it appears to the Central Government that coal is likely to be obtained from the land in the locality described in the Schedule annexed hereto;

And whereas the plan bearing number Rev/09/2012, dated the 19th October, 2012 containing details of the areas of land described in the said Schedule may be inspected at the office of the Central Coalfields Limited (Land and Revenue Department), Darbhanga House, Ranchi—834 029 (Jharkhand) or at the office of the General Manager, Rajhara Area, Darbhanga House, Ranchi (Jharkhand), Deputy Commissioner, District—Chatra, Jharkhand, Deputy Commissioner, District—Hazaribag, Jharkhand or at the Office of the General Manager (Exploration Division), RI—III, Central Mine Planning and Design Institute Limited, Gondwana Palace, Kanke Road, Ranchi, Jharkhand or at the Office of the Coal Controller, 1, Council House Street, Kolkata—700 001.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from the lands described in the said Schedule.

Any person interested in the land described in the aforesaid Schedule may—

(i) Claim compensation under section 6 of the Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 of the said Act; or

(ii) Claim compensation under sub-section (1) of section 13 of the Act in respect of prospecting license ceasing to have effect or under sub-section (4) of section 13 of the Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act, to the office of the General Manager, Central Coalfields Limited, Rajhara Area, District-Chatra (Jharkhand) or General Manager, Central Coalfields Limited (Land and Revenue Department), Darbhanga House, Ranchi-834 029 (Jharkhand) within a period of ninety days from the date of publication of this notification.

SCHEDULE

Pachra and Pachra South Coal Mining Block
District-Hazaribagh and Chatra (Jharkhand)

(plan bearing number Rev/09/2012, dated the 19th October, 2012)

ALL RIGHT:

Sl. No.	Mauja/ Village	Thana	Village/ Thana Number	Name of District	Area (in acres)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Chhattibariatu	Barkagaon	14	Hazaribagh	204.00	Part
2.	Jordag	Barkagaon	15	Hazaribagh	545.00	Part
3.	Nawakhap	Tandwa	47	Chatra	139.00	Part
4.	Pachandha	Tandwa	48	Chatra	722.11	Full
5.	Sijhua	Tandwa	53	Chatra	565.18	Full
6.	Ursu	Tandwa	54	Chatra	158.71	Part
7.	Bukru	Tandwa	55	Chatra	997.00	Part
				Total:	3331.50 Acres (approximately) or 1348.78 hectares (approximately)	

Intention of Plot numbers to be acquired in village Chhattibariatu—5(P), 6(P), 7(P), 8 to 60, 61(P), 62, 63, 64(P), 69(P), 70(P), 71(P), 73(P), 74(P), 75 to 103, 104(P), 105, 106 (P), 107(P), 114(P), 115(P), 116, 117(P), 2016, 2023 to 2066.

Intention of Plot numbers to be acquired in village Jordag—1, 2 (P), 3, 4, 12 (P), 615 (P), 616(P), 617 to 621, 622(P), 623 to 636, 2014, 2015, 2016, 2017, 2022, 2023, 2024(P).

Intention of Plot numbers to be acquired in village Nawakhap—24(P), 35(P), 37(P), 45 (P), 46(P), 49(P), 50 to 61, 62(P), 63 to 349 350(P), 351, 352(P), 353, 354, 355(P), 377 (P), 378(P), 382(P), 383, 387(P), 388(P), 389 to 416, 417(P), 457(P), 458(P), 459(P), 460(P), 461 to 779.

Intention of Plot numbers to be acquired in village Pachandha—1(P), 2 to 514, 515(P), 516 to 2418.

Intention of Plot numbers to be acquired in village Sijhua—1(P), 2 to 1385, 1386(P), 1387 to 1390.

Intention of Plot numbers to be acquired in village Ursu—585(P), 586 to 645.

Intention of Plot numbers to be acquired in village Bukru: 1 to 809, 810(P), 811(P), 812 (P), 813, 814(P) 815(P), 817(P), 847(P), 849, 886, 887, 888, 889, 890(P), 891 (P), 983 to 899, 900(P), 901 to 905, 906(P), 909(P), 911(P), 912 to 918, 919(P), 920(P), 986 (P), 987(P), 988 to 1051, 1052(P), 1053(P), 1056(P), 1057(P), 1058(P), 1105 to 1112, 1115 to 1158, 1159(P), 1160(P), 1162(P), 1163 to 1178, 1179(P), 1180 to 1193, 1194(P), 1195(P), 1196(P), 1197(P), 1198, 1216 to 1226, 1227(P), 1229, 1230, 1246, 1248(P), 1250(P), 1252 to 1261.

Boundary Description:

A-B-C Line start from point 'A' passes through along with center line of Garhi Nadi) Western common boundary of villages Nawakhap and Serandag Pachandha and Bingalat Sijhua and Kumarang Kalan, Bukru and Ursu and meets at point 'C'.

C-D Line passes through in village Bukru and meets at point 'D'.

D-E Line passes, through in part village Bukru, Jordag and Chhatibaraitu and meets at point 'E'.

E-A Line Passes, through in part villages Chattibariatu and Nawakhap and meets at starting point 'A'.

[F. No. 43015/10/2010-PRIW-I]

V. S. RANA, Under Secy.

आदेश

नई दिल्ली, 18, जून, 2013

का. आ. 1160.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी भारत के राजपत्र, भाग II खंड 3, उपखंड (ii), तारीख 11 दिसम्बर, 2010 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना का॰आ॰ संख्यांक 3002, तारीख 8 दिसम्बर, 2010 पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि में या ऐसी भूमि (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है), पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का अनुपालन करने के लिए रजामंद है जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि और इस प्रकार निहित भूमि में या उस पर के सभी अधिकार तारीख 11 दिसम्बर, 2010 से केन्दीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात्—

(i) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत् किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

(ii) शर्त (1) के अधीन सरकारी कंपनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में जोकि अपील आदि सभी विधिक कार्यवाहियों की बाबत् उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे;

(iii) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्ही कार्यवाहियों के संबंध में आवश्यक हो;

(iv) सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमि को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(v) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/06/2009-पीआरआईडब्ल्यू-I]

वी. एस. राणा, अवर सचिव

ORDER

New Delhi, the 18th June, 2013

S.O. 1160.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, Number S.O. 3002, dated the 8th December, 2010, in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 11th December, 2010, issued under Sub-Section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) hereinafter referred to as the said Act), the land and the rights in or over the land described in the schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under Sub-Section (1) of Section 10 of the said Act;

And whereas the Central Government is satisfied that the Western Coalfields Limited, Nagpur (hereinafter referred to as the Government company) is willing to comly with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the powers conferred by Sub-Section (1) of Section 11 of the said Act, the Central Government hereby directs that the said land and rights in or over the said land so vested shall, with effect from 11th December, 2010, instead of continuing to so vest in the Central Government, shall vest in the Government company, subject to the following terms and conditions, namely:—

(i) the Government company shall reimburse to the Central Government all payments made in respect of compensation, interest damages and the like, as determined under the provisions of the said Act;

(ii) a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government company under condition (1) and all expenditure incurred in connection with any such tribunal and persons appointed to assist the said tribunal shall be borne by the Government company and similarly, all expenditure incrurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in or over the said land, so vested, shall also be borne by the Government company;

(iii) The Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vesting;

(iv) the Government comapny shall have no power to transfer the said lands to any other person without the prior approval of the Central Government; and

(v) the Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land, as and when necessary.

[F. No. 43015/06/2009-PRIW-I]

V. S. RANA, Under Secy.

नई दिल्ली, 19 जून, 2013

का.आ. 1161.—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त होने की संभावना है;

उक्त अनुसूची में वर्णित भूमि के अंतर्गत आने वाले क्षेत्र की रेखांक संख्या सी-1(ई)III/ जेजेएनआर/886-0912, तारीख 14 सितम्बर, 2012, का निरीक्षण वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल इस्टेट, सिविल लाईन्स, नागपुर-440001 (महाराष्ट्र) के कार्यालय में या मुख्य महाप्रबंधक (एक्सप्लोरेशन प्रभाग), केन्द्रीय खान योजना और डिजाइन संस्थान, गोंडवाना पॅलेस, कांके रोड़, रांची-834001 के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता-700001 के कार्यालय में या जिला कलेक्टर, यवतमाल (महाराष्ट्र) के कार्यालय में किया जा सकता है।

अत:, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए पूर्वोक्त अनुसूची में वर्णित भूमि में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है।

उपर्युक्त उल्लिखित अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति—

(i) उक्त अधिनियम की धारा 6 के अधीन किसी क्षति या उक्त अधिनियम की धारा 4 की उप-धारा (3) के अधीन की गई किसी कार्रवाई से होने वाले क्षति की संभावना के लिए प्रतिकर का दावा कर सकेगा; या

(ii) उक्त अधिनियम की धारा 13 की उप-धारा (1) के अधीन प्रवृत्त नहीं रह गई पूर्वेक्षण अनुज्ञप्तियों के संबंध में या अधिनियम की धारा 13 की उप-धारा (4) के अधीन प्रवृत्त नहीं रह गए खनन पट्टे के लिए प्रतिकर का दावा कर सकेगा और उक्त अधिनियम की धारा 13 की उप-धारा (1) के खंड (i) से (iv) में विनिर्दिष्ट मदों के संबंध में उपगत व्यय को दर्शित करने के लिए भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा।

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन की अवधि के भीतर, क्षेत्रीय महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड वणी उत्तर क्षेत्र पोस्ट वणी, तहसील वणी, जिला यवतमाल (महाराष्ट्र) या महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, कोल इस्टेट, सिविल लाईन्स नागपुर-440001 (महाराष्ट्र) के कार्यालय को भेजेगा।

अनुसूची

शिवणी ओपनकास्ट ब्लाक

वणी उत्तर क्षेत्र

जिला-यवतमाल (महाराष्ट्र)

[रेखांक संख्या सी-1(ई)III/ जेजेएनआर/886-0912, तारीख 14 सितम्बर, 2012]

क्र॰ सं॰	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल (हेक्टर में)	क्षेत्रफल (एकड़ में)	टिप्पणी
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	शिवणी	6	मारेगांव	यवतमाल	37261	92072	भाग
2	झगडा	6	मारेगांव	यवतमाल	15692	38774	संपूर्ण
3	मुकटा	6	मारेगांव	यवतमाल	13931	34424	भाग
4	कानडा	6	मारेगांव	यवतमाल	8092	19995	भाग

कुल क्षेत्र: 74976 हेक्टर (लगभग)

या 185265 एकड़ (लगभग)

सीमा वर्णन:

क–ख–ग रेखा ग्राम शिवणी में बिन्दु 'क से आरंभ होती है तथा वर्धा नदी के दक्षिणी किनारे से गुजरती है, फिर ग्राम शिवणी एवं ग्राम झगडा की सम्मिलित सीमा को बिन्दु 'ख पर पार करती है तथा वर्धा नदी के किनारे से आगे बढ़ती हुई ग्राम झगडा तथा ग्राम मुकटा की सम्मिलित सीमा पर बिन्दु 'ग पर मिलती है।

ग–घ–ङ –च रेखा ग्राम झगडा तथा ग्राम मुकटा की सम्मिलित सीमा को बिन्दु 'ग पर पार करती है और वर्धा नदी के दक्षिणी किनारे से गुजरती हुई बिन्दु 'घ तक आती है तथा ग्राम मुकटा में से गुजरती हुई बिन्दु 'ङ तक पहुंचती है फिर ग्राम मुकटा एवं ग्राम कानडा की सम्मिलित सीमा से गुजरती हुई बिन्दु 'च पर मिलती है।

च–छ–ज–झ रेखा ग्राम मुकटा तथा ग्राम कानडा की सम्मिलित सीमा को पार करती है और ग्राम कानडा में से गुजरती है फिर सड़क को पार करती हुई ग्राम कानडा में से बिन्दु 'छ से बिन्दु 'ज तक आती है फिर ग्राम कानडा एवं शिवणी की ग्राम सीमा को पार करती है तथा ग्राम शिवणी में से गुजरती हुई बिन्दु 'झ पर मिलती है।

झ–क रेखा ग्राम शिवणी एवं ग्राम पारडी की सम्मिलित सीमा से गुजरती हुई वर्धा नदी के दक्षिणी किनारे पर आरंभिक बिन्दु 'क पर मिलती है।

[फा॰ सं॰ 43015/30/2012–पीआरआईडब्ल्यू–I]

वी॰एस॰ राणा, अवर सचिव

New Delhi, the 19th June, 2013

S.O. 1161.—Whereas, it appears to the Central Government that coal is likely to be obtained from the land in the locality mentioned in the Schedule annexed hereto;

And, Whereas, the Plan bearing number C-I(E)III/JJNR/886-0912, dated the 14th September, 2012 containing of the areas of land described in the said Schedule may be inspected at the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur—440 001 (Maharashtra) or at the office of the Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Palace, Kenke Raod Ranchi-834 001 or at the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the office of the District Collector, District Yavatmal (Maharashtra).

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal in the land described in the aforesaid schedule.

Any person interested in the land decribed in the above mentioned Schedule may—

(i) claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 thereof; or

(ii) claim compensation under sub-section (1) of section 13 of the said Act in respect of prospecting license ceasing to have effect or under sub-section (4) of section 13 of the Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act.

to the office of the Area General Manager, Western Coalfields Limited, Wani North Area, Post Wani, Tahsil Wani, District—Yavatmal (Maharashtra) or General Manager, Western Coalfields Limited, Land and Revenue Department, Coal Estate, Civil Lines, Nagpur—440 001 (Maharashtra) within a period of ninety days from the date of publication of this notification.

SCHEDULE

SHIVANI OPENCAST BLOCK
WANI NORTH AREA
DISTRICT—YAVATMAL (MAHARASHTRA)

[Plan bearing number C—1(E)III/JJNR/886-0912/, dated the 14th September, 2012]

Sl. No.	Name of village	Patwari circle number	Tahsil	District	Area (in hectares)	Area (in acres)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Shivani	6	Moregaon	Yavatmal	372.61	920.72	Part
2.	Zagada	6	Moregaon	Yavatmal	156.92	387.74	Full
3.	Mukata	6	Moregaon	Yavatmal	139.31	344.24	Part
4.	Kanada	6	Moregaon	Yavatmal	80.92	199.95	Part
				Total area:	749.76 hectare (Approximately) or 1852.65 acres (Approximately)		

Boundary description:

A-B-C: Line starts from Point 'A' in village Shivani and passes along the Southern Bank of Wardha River, then crosses the common boundary of villages Shivani and Zagada at Point 'B', then proceeds along the Southern Bank of Wardha River and meets at Point 'C' on common boundary of villages Zagada and Mukata.

C-D-E-F: Line crosses the boundary of villages Zagada and Mukata at Point 'C' and proceeds along the Southern Bank of Wardha River upto Point 'D', then passes through village Mukata upto Point 'E', then proceeds along the common boudary of villages Mukata and Kanada and meets at Point 'F'.

F-G-H-I: Line crosses the common the boundary of villages Mukata and Kanada and passes through village Kanada, then crosses the Road and proceeds through village Kanada from Point 'G' to Point 'H', then crosses the common boundary of villages Kanada and Shivani and meets at Point 'I'.

I-A: Line passes along the common boundary of village Shivani and Pardi and meets at starting Point 'A' on the Southern Bank of Wardha River.

[F. No. 43015/30/2012-PRIW-I]

V. S. RANA, Under Secy.

नई दिल्ली, 20 जून, 2013

का.आ. 1162.—केन्द्रीय सरकार सरकारी स्थान (अप्राधिकृत अभियोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का.आ. 1939, तारीख 30 जुलाई 1997, जो भारत के राजपत्र के भाग II, खंड 3, उपखंड (ii) तारीख 9 अगस्त, 1997 में प्रकाशित की गई थी, को अधिक्रान्त करते हुए नीचे सारणी के स्तंभ (1) में उल्लिखित अधिकारी को, जो सरकार के राजपत्रित अधिकारी की पंक्ति के समतुल्य अधिकारी है, उक्त अधिनियम के प्रयोजनों के लिए सम्पदा अधिकारी नियुक्त करती है जो उक्त सारणी के स्तंभ (2) में विनिर्दिष्ट सरकारी स्थानों की बाबत् अपनी-अपनी अधिकारिता की सीमाओं के भीतर उक्त अधिनियम द्वारा या उसके अधीन सम्पदा अधिकारियों को प्रदत्त शक्तियों का प्रयोग और अधिरोपित कर्तव्यों का पालन करेगा, अर्थात्:—

सारणी

अधिकारी का पदनाम	सरकारी स्थाना के प्रवर्ग और अधिकारिता की स्थानीय सीमाएं।
(1)	(2)
वरिष्ठ प्रबंधक (खनन), नार्थ ईस्टर्न कोलफील्ड्स, कोल इंडिया लिमिटेड, डाकघर: मारघेरिटा, जिला-तिनसुकिया (असम) पिन-786181	असम और मेघालय राज्यों में नार्थ ईस्टर्न कोलफील्ड्स, कोल इंडिया लिमिटेड के स्वामित्वाधीन अथवा उसके द्वारा पट्टे पर ली गई भूमि, भवन और अन्य स्थावर सम्पत्ति।

[फ. सं. 43022/01/2013-पीआरआईडब्ल्यू-1]

वी. एस. राणा, अवर सचिव

New Delhi, the 20th June, 2013

S.O. 1162.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971) and in suppression of the notification of the Government of India in the Ministry of Coal, number S.O. 1939, dated the 30th July, 1997, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 9th August, 1997, the Central Government hereby appoints the officer mentioned in column (1) of the Table below, being officer equivalent to the rank of Gazetted officer of the Government to the estate officer for the purpose of the said Act, who shall exercise the powers conferred and perform the duties imposed on the estate officer, by or under the said Act, within the limits of his jurisdiction in respect of public premises specified in column (2) of the said Table, namely:—

TABLE

Designation of officer.	Categories of public premises and local limits of jurisdiction.
(1)	(2)
Senior Manager (Mining), North Eastern Coalfields, Coal India Limited, Post Office: Margherita District: Tinsukia (Assam) Pin-786 181.	Lands, buildings and other immovable property of North Eastern Coalfields, Coal India Limited in the States of Assam and Meghalaya.

[F. No. 43022/01/2013-PRIW-I]

V. S. RANA, Under Secy.

नई दिल्ली, 21 जून, 2013

का.आ. 1163 —केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है;

उक्त अनुसूची में वर्णित भूमि के अन्तर्गत आने वाले क्षेत्र के ब्यौरे रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/436, तारीख 27 नवम्बर, 2012 का निरीक्षण कलक्टर, शहडोल (मध्यप्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता-700001 के कार्यालय में या साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

अत: अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अनुसूची में वर्णित भूमि से कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है।

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति-

(i) अधिनियम की धारा 6 के अधीन किसी क्षति या उक्त अधिनियम की धारा 4 की उप-धारा (3) के अधीन की गई किसी कार्रवाई से होने वाले क्षति की संभावना के लिए प्रतिकर का दावा कर सकेगा; या

(ii) उक्त अधिनियम की धारा 13 की उप-धारा (1) के अधीन समाप्त हो गई पूर्वेक्षण अनुज्ञप्तियों के संबंध में या अधिनियम की धारा 13 की उप-धारा (4) के अधीन समाप्त हो गए खनन पट्टे के लिए प्रतिकर का दावा कर सकेगा और उक्त अधिनियम की धारा 13 की उपधारा (1) के खंड (i) से (iv) में विनिर्दिष्ट मदों के संबंध में उपगत व्यय को उपदर्शित करने के लिए भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त करेगा।

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर, भारसाधक अधिकारी या विभागाध्यक्ष (राजस्व), साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड़, बिलासपुर-495006 (छत्तीसगढ़) को भेजेगें।

अनुसूची

बटुरा ब्लाक विस्तार-II, सोहागपुर क्षेत्र,

जिला-शहडोल (मध्यप्रदेश)

[रेखांक संख्यांक-एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/436, तारीख 27 नवम्बर, 2012]

(पूर्वेक्षण के लिए अधिसूचना भूमि दर्शाते हुए)

क्र सं॰	ग्राम का नाम	पटवारी हल्का नम्बर	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणी
1	रामपुर	107	सोहागपुर	शहडोल	20000	भाग
		कुल:-200000 हेक्टर (लगभग) या 49420 एकड़ (लगभग)				

सीमा वर्णन:

क-ख रेखा ग्राम रामपुर-बटुरा के सम्मिलित सीमा में बिन्दु 'क से आरंभ होती है और ग्राम रामपुर-बटुरा, रामपुर-बिछीया के भागत: सम्मिलित सीमा से गुजरती हुई बिन्दु 'ख पर मिलती है।

ख-ग रेखा ग्राम रामपुर के मध्य भाग से होती हुई बिन्दु 'ग पर मिलती है।

ग-घ रेखा ग्राम रामपुर के पश्चिमी भाग से होती हुई ग्राम रामपुर-कोदैली के सम्मिलित सीमा में बिन्दु 'घ पर मिलती है।

घ-क रेखा ग्राम रामपुर-कोदैली के भागत: सम्मिलित सीमा से होती हुई आरंभिक बिन्दु 'क पर मिलती है।

[फा.सं. 43015/37/2012-पीआरआईडब्ल्यू-I]

वी. एस. राणा, अवर सचिव

New Delhi, the 21st June, 2013

S.O. 1163.—Whereas it appears to the Central Government that Coal is likely to be obtained from the land described in the Schedule annexed hereto;

And whereas the plan bearing number SECL/BSP/GM(PLG)/LAND/436 dated the 27th November, 2012 containing details of the area of land described in the said schedule may be inspected at the office of the Collector, District Shahdol (Madhya Pradesh) or at the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road Bilaspur-495006 (Chhattisgarh);

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from the lands described in the aforesaid schedule.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development), Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from lands described in the said Schedule;

Any person interested in the land described in the above mentioned Schedue may—

(i) claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 of the said Act; or

(ii) claim compensation under sub-section (1) of section 13 of the said Act in respect of prospecting license ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the Office-In-Charge or Head of the Department (Revenue), South Eastern Coalfields Limited, Seepat Road, Bilaspur-495006 (Chhattisgarh) within a period of ninety days from the date of publication of this notification.

SCHEDULE

Batura Block Extension-II, Sohagpur Area,

District-Shahdol, Madhya Pradesh

[plan bearing number SECL/BSP/GM(PLG)/LAND/436 dated the 27th November, 2012]

(Showing the land notified for prospecting).

Sl. No.	Name of village	Patwari halka number	Tahsil	District	Area in hectares	Remarks
1.	Rampur	107	Sohagpur	Shahdol	200-000	Part

Total: 200.000 hectares (Approximately)
or 494.20 acres (Approximately)

BOUNDARY DESCRIPTION:

A-B Line starts from point 'A' on the common boundary of villages Rampur-Batura and passes along partly common boundary of villages Rampur-Batura, Rampur-Kodaily and meets at point 'B'.

B-C Line passes through middle part of village Rampur and meets at point 'C'.

C-D Line passes through Western part of village Rampur and meets at point 'D' on the common boundary of villages Rampur-Kodaily.

D-A Line passes along partly common boundary of villages Rampur-Kodaily and meets at starting point 'A'.

[F. No. 43015/37/2012-PRIW-I]

V. S. RANA, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 18 जून, 2013

का.आ. 1164 —भारत केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाईन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में उक्त अधिनियम के अधीन उत्तर प्रदेश, उत्तराखंड, हरियाणा और राष्ट्रीय राजधानी क्षेत्र दिल्ली के भीतर गेल (इण्डिया) लिमिटेड की सभी पाइपलाईनों के लिये सक्षम अधिकारी के कार्यों का निर्वहन करने के लिये श्री॰ अशोक कुमार लाल, डिप्टी कलेक्टर, उत्तर प्रदेश सरकार, को आगामी आदेश तक प्राधिकृत करती है।

[फा. सं. एल-14014/17/2013-जी.पी.]

निकुंज कुमार श्रीवास्तव, निदेशक

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 18th June, 2013

S.O. 1164.—In pursuance of clause (a) of section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Government of India hereby authorized Shri Ashok Kumar Lal, Deputy Collector, Government of Uttar Pradesh to perform the functions of Competent Authority for all pipelines of GAIL (India) Limited, under the said Act, within the territory of Uttar Pradesh, Uttarakhand, Haryana & NCT of Delhi, till further orders.

[F. No. L-14014/17/2013-G.P.]

NIKUNJ KUMAR SRIVASTAVA, Director

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 23 मई 2013

का. आ. 1165 —औद्योगिक विवाद अधिनियम 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय विमानपत्तन प्राधिकरण नई दिल्ली के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 1 दिल्ली के पंचाट (संदर्भ संख्या 140/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 23/5/2013 को प्राप्त हुआ था।

[सं. एल-11011/2/2009-आई आर (एम)]

जोहन तोपनो, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 23rd May, 2013

S.O. 1165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 140 of 2011) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India, New Delhi and their workman, which was received by the Central Government on 23/05/2013.

[No. L-11011/2/2009-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR.R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI.

I. D. No. 140/2011

The All India President,
AAI Mazdoor Sangh,
Flat No.166, DDA-SFS Flats, Sector-1, Pocket-II, Dwarka,
New Delhi-110075. .... Workman

Versus

The Chairman,
Airport Authority of India,
A-Block, Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi-110003 ....Management.

AWARD

Post of equipment mechanic with the Airport Authority of India (in short the Authority) falls in blind alley cadre. Next higher line of promotion is not available to an incumbent holding a post of equipment mechanic. With a view to obviate problems faced by employees of blind alley cadre(s) and employees of other categories facing stagnation, the Authority introduced Flexible Complementing Scheme (in short the FCS), for officers and

staff working in Group "C" cadres. As per the scheme, two cadres of service are grouped at the entry level and next higher level to provide upward growth opportunities. The scheme ensures first promotion to the officials within a reasonable period to keep up their morale. Officials with 8 year of service on a post in lower cadre would be promoted to higher grade, subject to their being found suitable for promotion by the Departmental Promotion Committee (in short the DPC), keeping ratio of strength of two cadres within the limits prescribed in the scheme. Promotion from higher grade in a group to the next higher cadre is based on availability of vacancy in that cadre. When promotion is vacancy based, as referred above and no vacancy is available for the promotion, in that situation a group "C" official would be given next higher scale on completion of 8 years of service in the grade. Their pay in the higher scale would be fixed at the stage equal to the pay in the lower scale held by them and if there is no such stage in the higher scale, then equal to the stage next above the pay in the lower scale.

2. Vide order dated 18/12/1997, the Authority stipulated that in blind alley cadres next higher available scale would be given to employees on completion of stipulated period of service and they would also get benefit of pay fixation in higher scale, as applicable to those promoted under FCS. Next step in this line was taken vide order dated 9/6/2001, wherein para 3 (XVI) it was provided that 40% posts in all other Group "C" blind alley cadres may be upgraded to the next higher scale. Another ameliorative step was taken, when provisions relating to availability of benefits under FCS scheme in International Aviation Division (lAD) "only once in his carrier" was withdrawn, thereby benefit under FCS were made available as and when one is eligible. However persons, promoted under FCS, were required again to go through DPC for regular promotion, *vide* order dated 7/12/1995. Till then, they were to feature at the bottom of seniority list with remarks "FCS".

3. The Authority adopted unified pay scales and designation for executives and non-executives working with it, *vide* order dated 9/2/1998. In October 2001, the Authority adopted unified designations for non-executive posts, thereby upgrading non-executive posts upto level 10, besides giving better nomenclatures to those levels too. Such steps were taken by the Authority with a view to ameliorate service conditions of employees, working with it under its lAD and National Aviation Division (NAD).

4. On 2nd May 1984 Shri Harinder Tiwari joined as equipment mechanic with the Authority at Rourkela. He was granted higher scales of pay of Rs.3100-5280 with effect from 1st May 1995 under FCS and Rs. 3300-5820 w.e.f. 1/4/96, when pay scales were unified by the Authority. On completion of 2 years combined service in the scale of Rs.3100-5280 /Rs.3300-5820 next higher scale of Rs.3450-6100 was granted to Shri Harinder Tiwari w.e.f. 1/5/97, besides other employees *vide* order 10/1/2002 issued by the Executive Director, Eastern Region, Kolkata. Above order was issued in consonance with order dated 27/12/2001, issued by Executive Director (P&A) of the Authority. Thereafter Shri Tiwari was transferred to Northern Region of the Authority. The Additional General Manager (P) wrote to the Regional Executive Director, Northern Region, Delhi, on 15/12/2004 highlighting that Shri Tiwari was not eligible for grant of next higher scale of Rs.3450-6100, since he was granted combined scale of pay of Rs.3100-5280 / Rs.3300-5820 under FCS. On consideration of facts, so placed by the Additional General Manager (P), order dated 7/1/2005 was issued by the Regional Executive Director (NR), thereby he withdrew the order of grant of scale of 3450-6100 to Shri Harinder Tiwari. Aggrieved by the said act, Shri Tiwari raised a demand of restoration of his pay, which demand was not considered to by the Authority. He approached Airport Authority of India Mazdoor Sangh (in short the Sangh) for redressal of his grievances. The Sangh espoused his cause and raised an industrial dispute before the Conciliation Officer. Since the Authority contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to the Central Govt. Industrial Tribunal No.2, New Delhi, for adjudication, *vide* order No. L-11011/2/2009-IR(M) New Delhi dated 01.10.2009, with following terms:

"Whether the demand of the Airport Authority of India Mazdoor Sangh to restore pay scale of Rs.3450-6100 (PR) (8000-16340 revised) granted to Shri H. Tiwari from 01.05.1997 and grant him and all other Equipment Mechanics of Northern Region, the pay scale of E-2 from 01.05.2003 in accordance with the instructions contained in CHQ order No.A.60011/27/2004-IR dated 14th October, 2004 is justified? What relief the concerned employees are entitled to?"

5. Claim statement, filed by the Sangh, is found to be filibusterous. However with efforts it was made out that the Sangh pleads that Shri Harinder Tiwari and other equipment mechanics, working in blind alley cadre, were granted next available higher scale of pay of Rs.3450-6100 on completion of their two years combined service in scale of pay of Rs.3100-5280 / Rs.3300-5820, in accordance with the instructions contained in letter No.NPA/5/Misc/98 dated 9.2.98. Anomalies committee was constituted by the Authority to consider cases of individual grievances arising out of unified scales of pay and designations for non-executive of lAD and NAD. The Authority issued order, vide letter No. MPA/5/Misc./2001 dated 9.6.01, for implementation of recommendations of anomalies committee. It was mentioned in the said order that irrespective of the cadres all non-executives in the scale of Rs.3300- 5820, designated as Superintendant, shall be placed in the non-functional scale of Rs.3450-6100 on completion of two years service as Senior Superintendent. Vide order dated 27.12.01, the Executive Director (P&A) clarified that

in case of blind alley where there was no higher scale in the line of promotion, the employee would continue to be eligible for the scale of pay of Rs.3450-6100 after completion of two years combined service in the scale of Rs.3100-5280 / Rs.3300-5820. It was emphasized therein that higher scale will be granted from 1.4.96 or on completion of two years service which ever was later. The Sangh projects that Shri Tiwari was rightly granted higher scale of pay in the scale of Rs.3450-6100.

6. Out of claim statement, it could also be made out that the Sangh projects that the Additional General Manager (P) wrote to the Regional Executive Director highlighting that Shri Tiwari was granted higher scale of pay, without taking into consideration that he was granted scale of pay of Rs.3100-5280 / Rs.3300-5820 under FCS. This letter was contrary to the order dated 27.12.01 issued by the Executive Director (P&A) of the Authority. It further emerge out that the Sangh assails that order dated 7.1.05, withdrawing scale of pay Rs.3450-6100 from Shri H.Tiwari is a result of misinterpretation of instructions contained in letters dated 27.12.01 and 14.10.04 issued by the Authority. It has been projected that on account of wrong decision of the Authority, Shri Tiwari and many other employees of blind alley cadre are adversely affected. The Sangh claims that appropriate orders may passed to restore pay scale granted to Shri Tiwari, fix his seniority without disturbing his wages, grade, continuity, and other conditions of service. A claim has also been made that a penalty may be imposed upon the Authority, since it resorted to unfair labour practice and violated statutory provisions of model standing orders.

7. Claim was demurred by the Authority, pleading that it is not maintainable since the Sangh is represented by Harinder Tiwari who has not filed any document to project such an authority in his favour. Shri Tiwari was not regular in the combined scale of Rs.3100-5280 / Rs.3300-5820 but was holding those scales only under FCS, hence his eligibility in the scale of pay of Rs.3450-6100 does not arise. Shri Harinder Tiwari was wrongly granted higher scale of Rs.3340-6100, *vide* order dated 10.01.2002, by the office of Regional Executive Director, Eastern Region, of the Authority. Benefits, which he got under wrong order, were withdrawn. However, Shri Tiwari was advised to take up the matter with the Regional Executive Director, Eastern Region. Pay of Shri Tiwari was re-fixed in the scale of Rs.3300-5820 (revised to Rs.7200-14460) under FCS and periodical increments were granted in that scale. Shri Tiwari cannot claim benefit out of mistake committed by the Authority.

8. There was no arbitrariness in refusing to grant scale of Rs.3450-6100 to Shri Tiwari. The seniority of equipment mechanics is maintained on region-wise basis and if an employee is transferred from one region to another, he becomes the junior-most. Seniority is maintained only for promotion purposes and not for grant of other benefits. Promotion shall be granted to Shri Tiwari as and when there is a vacancy, as per his seniority maintained in Northern Region. There is no violation of policy or rules and regulations. The action of the Authority is in accordance with the policy and R&P Regulations of the Authority, besides guidelines issued from time to time. The present petition put forth by the Sangh is not maintainable, hence may be dismissed, pleads the Authority.

9. The case was transferred to this Tribunal for adjudications, *vide* order No.Z- 22019/6/2007-IR(C-II), New Delhi dated 30.03.2010 by the appropriate Government.

10. Shri Harinder Tiwari examined himself in support of the claim. Ms. Anil Singh and Shri Rajiv Kapoor were examined by the Authority to dispel the claim. No other witness was examined by either of the parties.

11. Arguments were heard at the bar. Shri K.K.Aggarwal, authorized representative, advanced arguments on behalf of the Sangh. Shri L.B.Rai, authorized represented, presented facts on behalf of the Authority. Written arguments were also filed by the Sangh. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

12. Affidavit Ex.WW1/A, tendered by Shri Harinder Tiwari as evidence, is also filibusterous. However on reading of Ex.WW1/A it could be made out that Shri Tiwari wants to asserts that grant of higher scale of pay under FCS is not an impediment for grant of next higher scale of pay, on competition of prescribed service. Shri Tiwari proves various documents through his examination, out of which letter dated 12.05.04 written by the General Manager (P) to the Executive Director, order dated 9.2.98 for adoption of unified pay scales and designations, order dated 27.12.01 which speaks for grant of next higher pay of scale of Rs.3450-6100 on completion of two years service, order dated 18.12.97 which speak of grant of next higher available scale on completion of stipulated service by employees of blind alley cadres, order dated 9/6/01 reiterating those very propositions as contained in order dated 18/12/97, order dated 10/5/02 which takes ameliorative steps for equipment machanics delegation of administrative powers to Regional Executive Directors and order dated 14/10/04 are relevant. He again entered the witness box with the permission of the Tribunal and placed his affidavit Ex.WW1/B over the record as evidence. In Ex.WW1/B he projects instances when next higher scale was granted to the employees of blind alley cadres, despite the fact that they were in relevant pay scale under FCS.

13. Smt. Anil Singh tenders her affidavit Ex.MW1/A as evidence, wherein her thrust has been that since Shri Harinder Tiwari was not on regular promotion in the combined scale of Rs.3100-5280/3300-5820, he was not eligible for grant of pay of Rs.3450-6100. Shri Rajeev Kapoor speaks of the same facts in his affidavit Ex.MW2/A, tendered as evidence.

14. When facts unfolded by Shri Harinder Tiwari, Smt. Anil Singh and Shri Rajeev Kapoor are appreciated along with the documents proved over the record, it came to light that Shri Harinder Tiwari was appointed on the post of equipment mechanic with the Authority. Recruitments rules Ex.MW1/10 make it clear that post of equipment mechanic is to be filled by way of direct recruitment from amongst the applicants who are between 18-25 years (relaxable for Govt. servant), and have passed middle standard examination, besides having working knowledge of English and 2 years experience in maintenance of petrol and diesel electric generating sets, motor generator, secondary batteries fine extinguishers and radio masts, ropes and pulleys, electric maintained wiring and earthing of the method metallic sheathed cables, use of tools, usually met within a radio workshop and capable of climbing wireless masts of height up to 90 feet for carrying out minor repairs, replacements of masts headlights etc. It is an admitted fact that equipment mechanic falls in blind alley cadre. Thus it is evident that Shri Harinder Tiwari was appointed on a post which falls in such a service cadre which does not offer any prospect of improvement or advancement. Blind alley cadre is a situation in which no further progress can be made. It is not a matter of dispute that no promotional avenues were available to the employees, who were recruited on the post of equipment mechanic. There are others cadres too wherein no promotional avenues are available to the employees. Those cadres of service are commonly known as blind alley cadres in administrative circles of the Authority.

15. Besides employees working in blind alley cadres, there were other employees too who were facing stagnation in their service career. To boost morale of such employees the Authority took various steps to grant promotional opportunities, FCS is one of them. To know FCS scheme, it would be expedient to have a glance on the contents of Ex.MW1/12. For sake of convenience contents of Ex.MW1/12 are reproduced thus:

26th May 95.

"To

The Regional Executive Director
Delhi/Bombay/Calcutta/Madras

The Director
N.E. Region
Guwahati

Sub: Promotional Opportunities — Flexible Complementing Scheme

Sir,

A proposal to evolve a system to give relief to the staff who have been waiting for promotion for long years after completing the eligibility period, for want of vacant posts in the higher grade has been under consideration for sometime. This situation, as such, has been causing demoralization among the employees. A scheme of flexible complementing by grouping two cadres at the entry level and the next higher level has, as such, been evolved to provide upward growth opportunity. The scheme will ensure first promotion to the official on entry within a reasonable period to keep up his morale. The scheme will be applicable to officers and staff in Group 'C' cadres. The details of the flexible complementing scheme are as below:

1. Two cadres at the entry level and the next higher level would be grouped together. Example of such groupings are:

(i) JOA and SOA

(ii) Steno Grade II and Steno Grade III

(iii) Fire Operator and Fire Foreman

(iv) Technical Assistant and Assistant Technical Officer

(v) Aerodrome Officer and Senior Aerodrome Officer

Details of the groupings where flexible complementing scheme would be applied in the first stage in Group 'C' cadres are enclosed at Annexure-I.

2. (i) While the total sanctioned strength of a group comprising of two cadres would as a whole be maintained, there would be flexibility in the strength of each of the two cadres in a group which would vary within the prescribed limits of 60% (higher grade) to 40% (lower grade) at one end and 30% (higher grade) to 70% (lower grade) at the other end.

(ii) Officials with 8 years of service In Group 'C' post in the lower cadre would be promoted to higher grade, subject to their being found suitable for promotion by the DPC, keeping the ratio of strength of two cadres within the limits prescribed above.

As example, the combined of SOA (309) and JOA (409) grouped to together under the scheme is 718. Under flexible complementing the ratio of SOA and JOA could vary between 431:287 and 215:503 at anytime depending upon the number of official otherwise suitable for promotion having completed 8 years of service in the lower grade of JOA.

3. Promotion from higher grade in a group to the new higher cadre would be, however, be based on availability of vacancies in the cadre e.g. promotion of SOA, Foreman, ATO etc. to the next higher grade will be based purely on the availability of vacancies in the next higher grade.

4. The promotion in the flexible complementing scheme mentioned in the introduction, are intended to get some relief to the official who are waiting promotion for long after completing the eligibility period by grouping the posts keeping the strength in that group constant. The duties of lower posts vacated by such officials on promotion under the scheme after promotion will, however continue to be

performed by the official in higher cadre of the group. This would result in flexibility in deployment of Fire and Rescue Operation and Fire Foreman and other such cadres grouped together under the flexible complementing scheme.

5. In those cadres where flexible complementing scheme is not applicable or is not resorted to at this stage due to non availability of officials with more than 8 years service in the grade (Group 'C'), promotion would be based on availability of vacancy and follow the normal R&P Rules.

6. The cadres where regional seniority is followed (*e.g.* JOA and SOA) the group total of the Region would be taken to work out the limits in individual cadres under flexible complementing scheme.

7. The cut-off date for the purpose of assesement of 8 years of completed service in the cadre would reckon (30th June) of the year. As such, promotion of or grant of higher scale is detailed above would be done once a year in the months of 1st July taking those to have completed the required years before 30th April of the current year.

Such of the Group 'C' officials on the higher cadres in the group whose subsequent promotion is vacancies based would be given the next higher scale on completion of 8 years service in the grade in case they have not got their next promotion. Their pay in the higher scale will be fixed at the stage equal to the pay in the lower scale held by them and if there is no such stage in the higher scale then equal to the stage next above the pay in the lower scale.

Yours faithfully

Executive Director (P .A)"

16. As emerge out of Ex.MW1/12 promotional opportunities under FCS to next higher grade is based on availability of vacancies in that cadre. Employees are to be promoted in the next higher grade on completion of 8 years service in group C post in the lower cadre, subject to their being found suitable for promotion by the DPC, keeping the ratio of strength of the two cadres within the limits prescribed in the scheme. However next promotion is to be granted in the higher cadre on completion of 8 years service in case they have not got their next promotion. Thus it is evident that FCS scheme was not applicable to blind alley cadres, where no further promotion avenues were available. However the scheme was modified *vide* order No. AAI/MPA/FCS/97 dated 18/12/97, proved as Ex.WW1/17 (which was inadvertently proved as Ex.MW1/1 by Smt. Anil Singh). It would be expedient to take note of the contents of Ex.WW1/17, which are extracted thus:

"Flexible Complementing Scheme was introduced in NAD and IAD vide orders No. A.60011/5/94-PP dated 26th May, 1995 and orders No. PERS/MPP/1108/9/95 dated 31st August, 1995, respectively. It has now been decided to modify the scheme as under:

(i) Promotion under Flexible Complementing Scheme would be given from the first of the month subsequent to the month in which the individual official completes 6/8 years of service.

(ii) Next higher scale would be given those who are not covered under the maximum ceiling of 60% in the higher grade in the grouping of two cadres. In such cases, the benefit of pay fixation as on promotion under FCS would be allowed.

(iii) Benefit of pay fixation as applicable on promotion under FCS would also be allowed to those who are given the benefit of higher scale as a special grade where promotion under Flexible Complementing Scheme is not applicable.

(iv) In "blind-alley" cadres, next higher available scale would be given to them on completion of the stipulated period of service and they would also get the benefit of pay fixation in the higher scale, as applicable to those promoted under Flexible Complementing Scheme."

17. For the first time employees of blind alley cadres were made elegible for next higher available scale on completion of stipulated period of service and they could get benefit of pay fixation in the higher scale as applicable to those promoted under flexible complementing scheme. For getting next higher available scale, an employee in blind alley cadre had to render 8 years of service. Shri Harinder Tiwari was granted benefit of Ex. WW1/17, when he rendered 8 years service and order No. DC/CE/6(2) dated 30/4/98, proved as Ex.MW1/15, was issued by the Executive Director, Eastern Region of the Authority. Ex. MW1/15 speaks that next higher scale under FCS was granted to Shri Harinder Tiwari w.e.f. 1/5/95 and his pay was fixed in the scale of pay of Rs. 3100-110-4200-120-5280. Unified pay scales and designation were adopted by the Authority, *vide* order MPA/5/MISC/98 dated 9/2/98, which has been proved as Ex. WW1/13. Pay scale of Rs. 3100-110-4200-120-5280 was placed in unified scale of Rs. 3300-120-4500-130-5540-140-5820 on the strength of Ex. WW1/13. Thus order Ex.MW1/15 projects further that pay of Shri Tiwari was fixed under unified pay of scale of Rs. 3300-120-4500-130-5540-140-5820 w.e.f. 1/4/96. Benefits, given to Shri Tiwari on the strength of Ex. WW1/15, are corner stone of the case.

18. On adoption of unified pay scale and designation for non executive in the Authority, cases of individual grievances occurred. Since anomalies arose out of adoption of those pay scales and designation, anomaly committee was appointed to consider cases of individual grievances and representation made by the union. The anomaly committee considered those cases and made recommendations to the Authority in that regard. On consideration of the recommendations, so made, the Authority made orders on 9/6/01, provided as

Ex. WW1/20. Orders relevant to the present controversy are detailed as follows:

"3(ii) with the marger of scale of Rs. 3100-5280 and Rs.3300-5540 as Rs.3300-5820, any promotion in the higher scale of Rs. 3300-5540 made prior to 1/4/96 shall be treated as no promotion and the combined service in both the pre revised scale shall count towards promotion to the next higher scale.

(iii) Irrespective of the cadre, all non-executive in the scale of Rs.3300-5820 designated as superintendent shall be placed in the non-functional scale of Rs.3450-6100 on completion of 2 years service as senior superintendent".

19. Further clarification, relating to anomalies arising out of adoption of unified scale of pays and designation for non-executive, was made by the Authority through order No.A-60011/1/2001-IR dated 27/12/01, proved as Ex.WW1/14. For sake of convenience contents of Ex.WW1/14 are detailed as below:

"With reference to orders/clarification, issued *vide* order No.MPA/5/MISC/2001 dated 09.06.2001,10.10.2001 and 18.12.2001, it is hereby clarified that:

1. Employees

(i) who were holding the scale of Rs.3100-5280 on regular basis and were placed in the scale of pay of Rs.3300-5820 before 01.04.96, and

(ii) the next higher grade for promotion were equivalent to that of Assistant Manager.

would be eligible for next higher scale of Assistant Manager under FCS on completion of 8 years combined service in the grades of Rs.3100-5280 and Rs.3300-5820. The higher scale of Assistant Manager will be granted on completion of 8 years or from 01.04.96 whichever is later. This is also further subject to the condition that they have to undertake that they would not claim the scale of pay of Rs.3450-6100 after completion of two years combined service under existing scheme.

2. In case of Blind Alley where there was no higher scale in the line for promotion, the employee would continue to be eligible for the scale of pay of Rs.3450-6100 after completion of two years combined service in the scale of Rs.3100-5280/ Rs.3300-5820. The higher scale will be granted from 01.04.96 or on completion of 2 years of service whichever is later.

3. All benefits accruing from the scheme would be available for the period from 01.04.96 to 31.07.2001 *i.e.* till the introduction of Career Progression Plan (w.e.f. 1.8.2001)".

20. As projected above, employees of blind alley cadre were eligible for scale of pay of Rs. 3450-6100 after completion of 2 year combined service in the scale of Rs. 3100-5280/ Rs.3300-5820. Shri Harinder Tiwari bases his claim on order Ex.WW1/14. The Authority interprets contents of this document to the effect that for grant of next higher scale of Rs.3450-6100 Shri Tiwari would have been holding scale of Rs.3100-5820 on regular basis and would have been placed in the scale of pay of , Rs.3300-5820 before 1.4.96. Question for consideration would be as to whether the Authority interpret contents of Ex WW1/14 in right perspective? As pointed out above, scale of Rs.3100-5280 was granted to Shri Harinder Tiwari w.e.f 1/5/95 under FCS. It is not a matter of dispute that post of equipment mechanic falls in blind alley cadre, having no scope of promotion or carrier progression.

21. Whether Shri Tiwari would reach the scale of pay of Rs.3100-5280 on regular basis? When there is no scope of promotion for an equipment mechanic, Shri Tiwari can not hold the scale of Rs. 3100-5280 on regular basis. Resultantly, it is apparent that in no circumstances an equipment mechanic can hold scale of Rs. 3100-5280, in case he is not granted next higher available scale on completion of stipulated period of service, pursuant to orders contained in Ex.WW1/17. Thus it is evident that first limb of Ex.WW1/14 is not applicable to the employees of blind alley cadres. They are governed by second limb of Ex.WW1/14 and would be eligible for scale of pay of Rs.3450-6100 after completion of 2 year combined service in the unified scale of Rs.3100-5280/ Rs.3300-5820.

22. Whether benefit under FCS would be granted only once in entire career of an employee? FCS scheme, proved as Ex.MW1/12, speaks of grant of next higher scale, on completion of 8 years service, subject to an employee being found suitable for promotion by DPC, keeping the ratio of strength of two cadres within the limits prescribed therein. Promotion from higher grade in a group to the next higher grade would be based on availability of vacancy in that cadre. However group 'C' officials on the higher cadre would be given next higher scale of pay on completion of eight years of service in the grade in case they have not got their next promotion. Thus it is evident that from a higher grade in a group, an employee would be promoted to next higher grade on completion of eight years of service. FCS does not talk of any other promotion thereafter. This barrier was lifted *vide* order dated 9.6.01, proved as Ex.MW1/18. Para 3 (xvi) of the said order makes it clear that bar of getting benefit under FCS only once in his career by an employee was withdrawn and benefits under FCS shall be available as and when one is eligible. For ready reference those provisions are detailed as below:

"3(xvi) 40% posts in all Group 'D' cadres in the scale of pay of Rs.2400-3330 is upgraded to Rs.2550-3660".

Similarly 40% posts in all other group 'C' blind alley cadres may be upgraded to the next higher scale. The provisions in FCS scheme in lAD that an employee will get benefit under these schemes "only once in his career" is withdrawn thereby benefit under FCS shall be available as and when one is eligible".

23. Unified designation for non-executive posts were circulated by the Authority *vide* letter dated 15.10.01, proved as Ex.MW1/W7. An employee in the scale of Rs.3300-5820 was designated as Superintendent (Technical) and placed at N.E.-8 level. Ex.WW1/22 further projects that irrespective of cadres, all non-executives holding the post in the pre-revised scale of Rs.3300-5820 (now N.E.-8) are to be placed in the non functional pre-revised scale of Rs.3450-6100 (now N.E.-9) on completion of two years service before the period *w.e.f.* 1.4.96 to 31.7.01, that is, till introduction of career progress in plan envisaged *w.e.f* 1.8.01. Ex. WW1/23 presents that 40% posts of the equipment mechanic in the scale of pay of Rs. 3030 -5270 (pre-revised) have been upgraded in the scale of Rs.3300-5820 *w.e.f* 1/4/96 and designated as Superintendent (Equipment). The order further details that 21 equipment mechanics re designated as Supervisor Equipment were regularized/ promoted as Superintendent (Equipment) in the scale of Rs. 3300 -5820 *w.e.f* 1/4/96. This upgradation and subsequent promotion were held to be personal to them. Therefore these documents do crystalize that 40% posts of equipment mechanics were designated as Superintendent (Equipment) and some of the officers were regularized/ promoted as such by the Authority. It is abundantly clear that on grant of promotion under FCS an equipment mechanic has been treated as regularly promoted on the post of Superintendent (Equipment). Ex.WW1/28 reaffirns the same proposition.

24. Order dated 12/11/01, proved as Ex.MW1/W1, confirms that all non-executives in the revised scale of Rs.3300-5820 are to be placed in non-functional pre-revised scale of Rs.3450-6100 on completion of 2 year service between the period w.e.f 1/4/96 to 31/4/01, that is, till introduction of career progression plan envisaged *w.e.f* 1/8/01. In view of all these facts it is apparent that Shri Harinder Tiwari was entitled to be placed in non functional pre-revised scale of Rs.3450-6100 on completion of 2 year service in unified scale of Rs. 3300-5820 between the period 1/4/96 to 31/4/01.

25. Whether Executive Director, Eastern Region, Kolkata, was competent to grant non functional scale of pay, as referred above, to Shri Harinder Tiwari? Ex. WW1/24 details administrative powers, which were delegated to Regional Director and below. Full powers for promotions, confirmation, acceptance of resignation, transfer and cases relating to efficiency bar of Grade "C" and "D" employees were delegated to Regional Executive Director, subject to rules and procedure issued by the Corporate Headquarter from time to time. It is apparent that Executive Director, Eastern Region, Kolkata, was having full power to grant next higher non-functional scale of pay to Shri Tiwari. As pointed out above, all non-executives in pre-revised scale of Rs.3300-5820 were to be placed in non-functional pre-revised scale of Rs.3450-6100 on completion of two years service w.e.f. 1.4.96. Executive Director, Eastern Region, Kolkata, issued order dated 1.10.02 granting next higher scale of Rs. 3450-6100 Shri Tiwari and others, since they have completed two years combined service in the scale of Rs.3100-5280/Rs.3300-5820 on or after 1.4.96. The said order was in accordance with procedure/rules issued in that regard from time to time.

26. Order dated 7.1.05, proved as Ex.MW1/20, on the strength of which the Authority withdrew order dated 10.1.02 granting non-functional scale of Rs,.3450- 6100 to Shri Tiwari is not in accordance with instructions, issued by the Authority from time to time. This order is not correct and justified. It cannot be sustained. Consequently it is ruled that the demand of the Sangh for restoration of pay scale of Rs.3450-6100 (pre-revised) (Rs.8000-16340 revised) granted to Shri Tiwari from 1.5.97 and for grant of pay scale of E-2 to Shri Tiwari and all other equipment mechanic of Northern Region, in accordance with Instructions contained in Corporate Headquarter order No.A-60011/27/2004-IR dated 14.10.04 is legal and justified. The Authority is commanded to restore pay scale of Shri Tiwari in pursuance of order dated 7.1.02, passed by the Executive Director, Eastern Region, Kolkatta, and grant him and other equipment mechanic pay scale of E-2 in accordance with the instructions issued by the Corporate Headquarter on 14.10.04. An award is, accordingly, passed in favour of the Sangh and against the Authority. It be sent to the appropriate Government for publication.

Dated 04.04.2013 Dr. R. K YADAV, Presiding Officer

नई दिल्ली, 27 मई 2013

का. आ. 1166.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स इण्डियन एयरलाइन्स लि॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 1, नई दिल्ली के पंचाट (संदर्भ संख्या 265/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/04/2013 को प्राप्त हुआ था।

[सं एल-11012/48/2001-आई आर (सी- I)]

एम के सिंह, अनुभाग अधिकारी

New Delhi, the 27th May, 2013

S.O. 1166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 265/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Indian Airlines Ltd. and their workmen, received by the Central Government on 02/04/2013.

[No. L-11012/48/2001-IR (C-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE DR.R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 265/2011

Shri Joginder Singh S/o Sh.Sadhu Singh
R/o E-93, Nihal Vihar,
New Delhi -110041.

..... Workman

Versus

The General Manager (Personnel) Indian Airlines Ltd.,
113, Gurudwara Rakabganj Road,
New Delhi -110001.

..... Management

AWARD

Erstwhile Indian Airlines Ltd. (hereinafter referred to as the Airlines) and Air India Ltd. amalgamated with M/s. National Aviation Company of India Ltd. in August 2007. Prior to its amalgamation, the Airlines used to recruit staff on regular basis against permanent vacancies. Whenever vacancies arose due to absence on maternity leave of regular female employees or with regular employees proceeded on medical leave for a periods exceeding one month as well as in case of exigencies to cope with work load, the Airlines used to engage casual employees on daily rate basis for specified period, from time to time. Shri Joginder Singh was engaged by the Airlines as office assistant on daily rate basis on 05.08.1997. His services were extended from time to time, at intervals. After 08.02.2000, his contract of employment was not renewed. Feeling aggrieved by the said act, he raised a demand for reinstatement in service. Since his demand was not conceded to, he raised an industrial dispute before the Conciliation Officer. The Airlines contested his claim and as such conciliation proceedings ended into a failure. On consideration of the failure report, submitted by the Conciliation Officer, the appropriate Government referred the disputed to this Tribunal for adjudication, *vide* order No.L-11012/48/2001-IR(C-I), New Delhi dated 10.08.2001, with following terms:

> "Whether action of the management of Indian Airlines in terminating the services of Shri Joginder Singh with effect from 08.02.2000 is just and legal? If not, to what relief the said workman is entitled?"

2. Claim statement was filed by Shri Joginder Singh pleading therein that he was employed by the Airlines on the post of Office Assistant, *vide* appointment letter dated 05.08.1997. He was required to perform the job, which was clerical in nature. Consolidated salary of Rs.6500.00 approximately per month was paid to him. He worked with dedication. Fresh appointment letters were issued by the Airlines every month, only with a view to circumvent legal provisions and his claim for being made permanent in service. He was never granted status of a permanent employee. He requested the Airlines several times to regularize his services. Instead of regularizing his service, his services were terminated on 08.02.2000. He claims reinstatement in service with continuity and full back wages, besides a sum of Rs.1,56,000.00 towards wages with interest @ 18% per annum. He also claims promotion and other consequential benefits.

3. Claim was demurred by the Airlines pleading that it has statutory rules of recruitment and promotion for its employees. All appointments on regular posts are made under the provisions of rules of recruitment and promotion. Claim put forward by Shri Joginder Singh is not maintainable since he seeks permanent appointment in violation of recruitment and promotion rules. The Airlines does not dispute that he was engaged from 05.08.1997 to 07.02.2000 as a casual employee for specified period, due to work load arising out of leave vacancy as well as on account of exigency of work. He was engaged to take care of work load. Clerical work was performed by the claimant. His engagement was intermittent for specified period from time to time. Subsequently, a ward of a deceased employee was appointed on compassionate grounds and necessity of engaging the claimant ceased to exist. Claimant was well aware that his engagement was purely casual and restricted till regular incumbent returns for duty. It is claimed that no right accrued to Shri Joginder Singh to seek reinstatement in service. His claim is liable to be dismissed, being devoid of merits.

4. In rejoinder, the claimant reiterates facts pleaded in the claim statement.

5. The claimant has examined himself in support of his claim. Shri S.D.Chhabra was examined by the Airlines to dispel the claim. No other witness was examined by either of the parties.

6. *Vide* order No.Z-22019/6/2007-IR(C-II) New Delhi dated 11.02.2008, case was transferred to Central Government Industrial Tribunal No. II, New Delhi for adjudication by the appropriate Government. It was re-transferred to this Tribunal for adjudication, *vide* order No.L-11012/48/2001-IR(C-I), New Delhi dated 30.03.2011.

7. Arguments were heard at the bar. None came forward to advance arguments on behalf of the claimant. M/s. Poonam Dass, authorized representative, presented facts on behalf of the Airlines. Written submissions were also filed by the Airlines. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

8. Shri Joginder Singh unfolds in his affidavit Ex.WW1/A, tendered as evidence, that he was appointed as Office Assistant by the Airlines on 05.08.1997. He worked upto 03.10.1997. He worked with the Airlines from 06.10.1997

to 04.12.1997, 11.12.1997 to 09.01.1998, 02.02.98 to 03.03.98, 06.03.98 to 03.04.98, 23.04.98 to 26.06.98, 09.07.98 to 04.08.98. He was again appointed from 07.09.98 to 04.12.98, 29.12.98 to 27.01.99, 28.01.99 to 26.02.99, 01.03.99 to 30.03.99, 31.03.99 to 29.04.99, 03.05.99 to 01.07.99, 05.07.99 to 02.09.99. He again worked with the Airlines from 06.09.99 to 05.10.99,02.11.99 to 01.12.99,02.12.99 to 30.12.99,10.01.2000 till 08.02.2000. Appointment letters, issued in his favour from time to time, are Ex.WW1/1 to Ex.WW1/26. He asserts that at least 10 persons were regularized in service by the Airlines, who were placed on similar footing on which he stands. Shri Jayanta Chatterjee, Office Assistant, was regularized in the year 1997. Shri Sameer Khanna, Bill Typist, was regularized in 1997 itself, Renu Panikar, Office Assistant and Ms.Asha were also regularized in service by the Airlines. During course of his cross examination, he concedes that he was engaged on casual basis as and when there were exigencies of work. He was paid for actual days of work. Fresh appointment letters were issued in his favour as and when earlier appointment period came to an end. He was not employed on permanent basis. His services were not terminated. He was not engaged as there was no work.

9. Shri S.D.Chhabra unfolds in his affidavit Ex.MW1/A, tendered as evidence, that the claimant was engaged for fixed period on different occasions from 05.08.97 to 07.02.2000, to meet exigencies of work arising out of leave vacancy, sporadic absenteeism of regular employees and additional work load. His engagement was for fixed period of 30 days and co-terminus on expiry of that period. Every engagement was independent and claimant was well aware of the terms of his engagement. His services were never terminated by the Airlines, since his engagement being for a fixed period, automatically came to an end. There is complete ban on external recruitment in non-operational categories. As such, no appointment is made in the cadre of Office Assistant by the Airlines.

10. Out of facts unfolded by the claimant and Shri Chhabra, it came to light that the claimant was engaged by the Airlines for specific period on different occasions, to meet exigency of work rising out of leave vacancy, sporadic absenteeism of regular employees and additional work load. His appointment letters, which are Ex.WW1/1 to Ex.WW1/26, highlight that the Airlines specified. The period for which the claimant was engaged. Ex.WW1/1 makes it clear that he was engaged for a period of 30 days from 05.08.97 to 03.09.97 or till regular incumbent was to report for duty, whichever was earlier. Similar factual position emerges out of appointment letters issued in his favour, except Ex.WW1/9 and Ex.WW1/17. Ex.WW1/9 highlights that his earlier appointment was further extended for a period of 30 days from 20.05.98. Ex.WW1/17 specifies that the claimant appointed for a period of 30 days from 01.03.99 to 30.03.99 to work in Catering Section, would work in Establishment Section with effect from 08.03.99. Terms and conditions contained in Ex.WW1/16 remained unchanged. Therefore, out of contents of the aforesaid appointment letters, it is crystal clear that the claimant was appointed by the Airlines to meet exigencies of work, arising out of leave vacancies or sporadic absenteeism of regular employees.

11. As is evident out of facts unfolded by the claimant and Shri Chhabra, claimant was never engaged after 08.02.2000, Ex.WW1/26 makes it clear that claimant was appointed as Office Assistant on casual basis in Establishment Section for 30 days from 10.01.2000 to 08.02.2000 or till such time regular incumbent was to report for duty, whichever was earlier. These terms and conditions of his appointment were not renewed any further. Claimant may agitate that from 08.02.2000 till 9.02.1999, he worked for 305 days in preceding twelve months from the date of his alleged termination. He may argue that he rendered continuous service of more than 240 days in preceding 12 months and it was incumbent upon the Airlines to follow re-conditions, contained in section 25F of the Industrial Disputes Act, 1947 (in short the Act). His contention may be that since one month's notice or pay in lieu thereof was not given nor retrenchment compensation was paid, termination of his service is violative of section 25F of the Act.

12. Next count of argument may be raised on behalf of the claimant that the Airlines issued fresh appointment letter from time to time with a view to show artificial breaks in his service. He may argue that it was so done by the Airlines just to project that here was no continuity in his service. Motive behind this method of engagement was to stop him in attaining continuous service or in order to frustrate his rights under Chapter VA of the Act, despite the fact that his services remained satisfactory. The Airlines adopted this method only with a view to disable him from rendering continuous service of 240 days and to acquire protection of section 25F of the Act. Claimant may agitate that such activities on the part of the Airlines amounts to unfair labour practice.

13. Unfair labour practice is committed by an employer when he does or omits to do something, which act or omission is invasion of the legitimate rights or interests of the workmen. Basic principle in the concept of "unfair labour practice" is the involvement of relationship of employer and employee. In other words, question of unfair labour practice can arise only when something is done or omitted in connection with the matter which has something to do to with regulating the relationship of employer and employee. It is not permissible to ascribe "unfair labour practice" to something done or omitted in connection with the matter which has nothing to do with relationship of employer and employee. This is the basic or fundamental principle underlying the concept of "unfair labour practice".

14. In Kapurthala Central Co-operative Bank Ltd. (1984 Lab. I.C. 974), the Division Bench of Punjab and Haryana

High Court had castigated the practice of retrenchment of a workman close to his attaining a year's continuous service in order to frustrate his attaining rights under Chapter VA of the Act and ruled that termination of services of the workmen on their completing 230 days of despite the fact that their work was satisfactory, disabling them from completing 240 days service with a view to deprive them of the protection of section 25F of the Act amounts to unfair labour practice, particularly when other persons were employed in their place.

15. Unjust dismissal, unmerited promotion, particularly towards one set of workers, regardless of merit, are illustrations of unfair labour practice. In HD Singh [1986(1) LLJ 127], Reserve Bank of India issued confidential circular directing its officers that workmen like applicants should not be engaged continuously but should as far as possible be offered work on rotation basis. In view of the provisions of item 10 of Fifth Schedule appended to the Act, the Apex court held that it had no option but to hold that the bank indulged in methods amounting to "unfair labour practice".

16. Appointment letters, which are Ex.WW1/1 to Ex.WW1/26, highlight that claimant was engaged as Office Assistant on casual basis for specific periods against leave vacancies. In his appointment letters, the Airlines made it clear that he is appointed for specific period or till such time the regular incumbent would report for duty, whichever was earlier. It is crystal clear that leave vacancies were available with the Airlines for specific period on account of regular employees happening to be on leave on medical grounds or on account of their sporadic absenteeism. Therefore it is apparent that no regular vacancy was available with the Airlines to appoint the claimant against it. His appointment was against leave vacancy. Consequently, method of his engagement intermittently for specific periods nowhere bring it over the record that the Airlines tried to frustrate claim of Shri Joginder Singh to acquire protection under section 25F of the Act. As and when leave vacancy arose, he was appointed, with specific stipulation that his engagement was for a period of 30 days or till regular incumbent would report for duty. Consequently, it is evident that in absence of regular vacancy, the Airlines could engage the claimant in casual manner. His casual engagement was not against a specific leave vacancy for a long duration. Under these circumstances, it cannot be said that method adopted by the Airlines amounted to unfair labour practice.

17. In order to attain protection under section 25F of the Act, it is incumbent upon the claimant to establish that action of the Airlines in dispensing with his services amounts to retrenchment. For an answer, definition of the term is to be construed. Clause (oo) of section 2 of the Act defines "retrenchment". For the same of convenience, the said definition is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health."

18. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. (1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

19. Sub Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. Thus "non-renewal of contract of employment" pre-supposes an existing contract of employment, which is not renewed. When services of an employee is terminated on account of non renewal of contract of employment, between the employer and the workman, it does not amount to retrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated, under this part too, would

not amount to retrenchment. However this sub-clause being in the nature of an .exception to clause (oo) of section 2 of the Act, is ruled to be construed strictly when contractual agreement is used as modus operandi to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. See Shailendra Nath Shukla (1987 Lab. I.C. 1607), Dilip Hanumantrao Shrike (1990 Lab. I.C. 100) and Balbir Singh [1990 (1) LLJ. 443].

20. On review of law laid by the Apex Court and various High Courts, a single Judge of the Madhya Pradesh High Court, in Madhya Pradesh Bank Karamchari Sangh (1996 Lab. I.C. 1161) has laid following principles of interpretation and application of sub-clause (bb) of clause (oo) of section 2 of the Act:

"(i) that the provisions of section 2(oo)(bb) are to be construed benevolently in favour of the workman,

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under section 2(oo)(bb),

(iii) that the provisions of section 2 (oo)(bb) are not to be interpreted in the manner which may stifle the main provision,

(iv) that if the workman continues in service, the non-renewal of the contract can be deemed as mala-fide and it may amount to be a fraud on statute,

(v) that there would be wrong presumption of non-applicability of section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end."

21. Whether provisions of retrenchment, enacted in the Act, provide for any security of tenure? Answer lies in negative. Provisions of retrenchment provide for certain benefits to a workman in case of termination of his service, falling within the ambit of definition of retrenchment. On compliance of the requirements of section 25F or 25N and 25G of the Act, it is open to the employer to retrench a workman.

22. Termination of service of an employee during the period of probation was held to be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in C.M. Venugopal [1994 (1) LLJ 597]. As per fact of the case, Regulation 14 of the Life Insurance Corporation of India. (Staff) Regulation 1962 empowered the Corporation to terminate the service of an employee within the period of probation. The employee was put on probation for a period of one year, which was extended by another year. Since he could not achieve the target to earn confirmation, his service was terminated in terms of Regulation 14 as well as order of appointment. The Apex Court ruled that the case was covered by the exception contained in sub-clause (bb) hence it was not retrenchment.

23. In Morinda Co-operative Sugar Mills Ltd. (1996 Lab. I.C. 221) a sugar factory used to employ certain number of workmen during crushing season and at the end to the crushing season their employment used to cease. The Supreme Court held that despite the fact that the workmen worked for more than 240 days in a year, cessation of their employment at the end of crushing season would not amount to retrenchment in view of the provisions of sub-clause (bb) of section 2(oo) of the Act. It was observed as follows:

> "4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.
>
> 5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in sub-clause (bb) of section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated herein before and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work."

24. Above legal position was reiterated by the Apex Court in Anil Bapurao Kanase [1997 (10) S.C.C. 599] wherein it was noted as follows:

> "3. The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28.3.1995 in Writ Petition No.488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Coop. Sugar Mills Ltd. v. Ram Kishan in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing, in para 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per sub-clause (bb) of Section 2(oo) of the Act. Since the present work is

seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above".

25. In Harmohinder Singh [2001 (5) S.C.C. 540] an employee was appointed as a salesman by kharga canteen on 1.6.74 and subsequently as a cashier on 9.8.75. The letter of appointment and Standing Orders, *inter alia,* provided that his service could be terminated by one month's notice by either party. He was served with a notice to the effect that his service would be relinquished with effect from 30.6.1989. Relying precedent in Uptron India Ltd. [1998 (6) S.C.C. 538] the Apex Court ruled that contract of service for a fixed term are excluded from the ambit of retrenchment. Decision in Balbir Singh (supra) was held to be erroneous. It was also ruled that principles of natural justice are not applicable where termination takes place on expiry of contract of service.

26. In Batala Coop. Sugar Mills Ltd. [2005 (8) S.C.C. 481] an employee was engaged on casual basis on daily wages for specific work and for a specific period. He was engaged on 1.4.1986 and worked upto 12.2.94. The Labour Court concluded that termination of his services was vocative of provisions of section 25-F of the Act, hence ordered for his reinstatement with 50% back wages. Relying precedents in Morinda Coop. Sugar Mills (supra) and Anil Bapura Kanase (supra) the Apex Court ruled that since his engagement was for a specific period and specific work, relief granted to him by the Labour Court cannot be maintained.

27. The Apex Court dealt with such a situation again in Darbara Singh (2006 LLR 68) wherein an employee was appointed by the Punjab State Electricity Board as peon on daily wage basis from 8.1.88 to 29.2.88. His services were extend from time to time and finally dispensed with in June 1989. The Supreme Court ruled that engagement of Darbara Singh was for a specific period and conditional. His termination did not amount to retrenchment. His case was found to be covered under exception contained in sub-clause (bb) of section 2(oo0) of the Act. In Kishore Chand Samal (2006 LLR 65), same view was maintained by the Apex Court. It was ruled therein that the precedent in S.M. Nilajkar [2003 (II) LLJ 359] has no application to the controversy since it was ruled therein that mere mention about the engagement being temporary without indication of any period attracts section 25 F of the Act if it is proved that the concerned workman had worked continuously for more than 240 days. Case of Darbara Singh and Kishan Chand and Samal were found to be relating to fixed term of appointment.

28. In BSES Yamuna Power Ltd. (2006 LLR 1144) Rakesh Kumar was appointed as Copyist on 29.9.89, initially for a period of three months as a daily wager. His term of appointment was extended up to 20.9.90. No further extension was given and his services were dispensed with on 20.9.90. On consideration of facts and law, High Court of Delhi has observed thus:

> ". ..In the present case, the respondent was appointed as a copyist for totaling the accounts of ledger for the year 1986-87 and then for 1987-88. His initial appointment was for the period of three months. It was extended from time to time and no extension was given after 20th September, 1990. He was appointed without any regular process of appointment, purely casual and on temporary basis for specific work of totaling of ledger. When this work was over, no extension was given. I consider that appointment as that of the respondent is squarely covered under section 2(oo)(bb) of the Act. Giving of non extension did not amount to termination of service, it was not a case of retrenchment".

29. Precedents, handed down by Allahabad High Court in Shailendra Nath Shukla (supra), Bombay High Court in Dilip Hanumantrao Shirke (supra), Punjab & Haryana High Court in Balbir Singh (supra) and Madhya Pradesh High Court in Madhya Pradesh Bank Karamchari Sangh (supra) castrate sub-clause (bb) of section 2(oo) of the Act. Ratio decidendi in these precedents abrogates statutory provisions of sub-clause (bb) of section 2 (oo) of the Act without even discussing the legality or constitutional validity of the clause. On the other hand the Apex Court in C.M.Venugopal (supra), " Morinda Co-operative Sugar Mills Ltd. (supra), Anil Bapurao Kanase (supra), Harmohinder Singh (supra), Batala Coop. Sugar Mills Ltd. (supra), Darbara Singh (supra) and Kishore Chand Samal (supra) and High Court of Delhi in BSES Yamuna Power Ltd. (supra) spoke that case of an employee, appointed for a specific period which was extended from time to time, would be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in case his services are dispensed with as a result of non-renewal of the contract of employment between him and his employer, on its expiry or termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The law, so laid, holds the water and would be applied to the claimant.

30. Claimant may place reliance on the precedent in Devender Singh [2011 (6) SSC 584] in which case appellant was engaged as clerk for a period of 6 months on contract basis. On expiry of 6 months, his services were extended for another term of 6 months form 01.11.1995 to 20.04.1996. This exercise was again repeated and his term of employment was extended for another period upto

01.05.1996. However, his engagement was discontinued with effect from 30.9.1996 without giving any notice or pay in lieu thereof and retrenchment compensation. In the light of the facts referred above, Apex Court ruled that plea taken by the management that its case was covered by Section 2(oo) (bb) of the Act was squarely misconceived. It was further emphasized that no material was produced by the management to show that engagement of the appellant was discontinued relying upon the terms and conditions of his employment. Above precedent is based on distinct and different facts. Services of the appellant in the precedent were done away with during currency of extension period. However, that case was beyond the ambit of section 2(oo)(bb) of the Act. Here in the case, services of the claimant came to an end without any extension or granting any service to the claimant after 08.02.1996. Under these circumstances, the said precedent cannot espouse the cause of the claimant.

31. As detailed above, the claimant was engaged by the Airlines on 05.08.97, for a period of 30 days against leave vacancy. He was engaged again from time to time against leave vacancy, as is evident out of appointment letters Ex.WW1/2 to Ex.WW1/26. His engagement remained for different spells, as is apparent out of the records referred above. His appointment as an Office Assistant was extended from to time by the Airlines against leave vacancy. Specific period was always mentioned in his appointment letter, for which he was engaged or his engagement was extended. Therefore, it is evident that his case squarely fell within the ambit of exemption available under section (bb) (oo) of section 2 of the Act. It cannot be said that by non renewal of his contact of employment, the I Airlines retrenched the claimant. Thus, it is evident that action of the Airlines i does not amount to retrenchment and provisions of section 25F of the Act does not come into play.

32. Claimant agitates that Ms.Jayanta Chatterjee, Shri Sameer Khanna, Ms.Renu Panika and Ms.Asha were appointed by the Airlines against permanent posts. He agitates that he has been discriminated. For an answer legal frame work is to be noted. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally, administered and that like should be treated alike. Article 16 of the Constitution , guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions (c) termination of employment and (d) matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all makes in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

33. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

34. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time.

35. No evidence worth name was projected by the claimant that Sh.Jayanta Chatterjee, Shri Sameer Khanna, Ms.Renu Panika and Ms.Asha were engaged by the Airlines for specific period against leave vacancies. He simply unfolds in his affidavit that Shri Jayanta Chatterjee, was working in Personnel Department, whose services were regularized in 1997, Shri Sameer Khanna was working as Bill Typist in Planning Department, whose services were also regularized in 1997. He details that Ms. Renu Panika was working in Public Relations Department while Ms.Asha was working in C.R.A. Department at Safdarjung Airport. According to the claimant, their services were regularized

subsequently. He failed to produce any evidence to this effect that the aforesaid four persons were also engaged against leave vacancies. When the Airlines engages someone against vacant post and regularizes his services, then that person stands on a different pedestal than an employee who is engaged against a leave vacancy. Engagement against leave vacancy projects that no vacancy of permanent nature exists for continuation/ regularization of services of such an employee. He is to be relieved as and when regular incumbent joins duties. Consequently, it is crystal clear that the case of the claimant stands on a different pedestal. He cannot claim equality with unequals.

36. In view of reasons detailed above, it is evident that non-renewal of terms of contract in case of the claimant does not amount to retrenchment of his services. Since claimant was engaged against leave vacancy for specific period at different intervals, it cannot be said that the Airlines adopted unfair labour practice. Claimant could not project a case of discrimination also. Under these circumstances, no substance is noticed in his claim statement. His claim statement deserves dismissal. Accordingly, his claim statement is discarded. An award is passed in favour of the Airlines and against the claimant. It be sent to the appropriate Government for publication.

Dated: 30.11.2012 Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 27 मई, 2013

का.आ. 1167.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन एयरलाइन्स लि॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 40/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/04/2013 को प्राप्त हुआ था।

[सं. एल-11012/68/1998-आई.आर. (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th May, 2013

NOTIFICATION

S.O. 1167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Indian Airlines Ltd. and their workmen, received by the Central Government on 02/04/2013.

[No. L-11012/68/1998-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 40/2011

Shri Arvind Wadhwa,

D-38, Kalkaji, Alaknanda,

New Delhi-110019.

...Workman

Versus

The General Manager (Engineering)

Indian Airlines Ltd.,

Northern Zone, IGI Airport,

New Delhi.

...Management

AWARD

A Technician working with Indian Airlines Ltd., (now known as National Aviation Company of India Ltd.,) (in short the Aviation Company) suffered an electric shock while on duty. He was treated by medical staff of the Aviation Company, the employer. The injury sustained by him resulted in pain in his back bone. The technician absented from his duties in order to get treatment at JPN Hospital, New Delhi. Since no intimation was given by him to his employer about his absence, a charge-sheet dated 19.9.1994 was sent to his residential address by registered post. The technician opted not to send his statement of defence to the charge-sheet, so served upon him. An enquiry was constituted. Enquiry Officer sent notices to him, to which notices he did not respond. Constrained by the circumstances the Enquiry Officer proceeded *ex-parte*. The Disciplinary, Authority concurred with the findings of the Enquiry Officer. A show cause notice, proposing punishment of dismissal from service, was sent to him by the Disciplinary Authority. The technician sent reply to the show cause notice, which was found not to be satisfactory. He was dismissed from service, *vide* order dated 30.1.1996 sent to him by post on 9.2.1996, An industrial dispute was referred before the Conciliation Officer. Since the Aviation Company contested the claim, the conciliation proceedings ended into failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-11012/68/98-IR (C-I), New Delhi dated 17.2.1999, with following terms:—

"क्या श्री अरविन्द वधवा के आचार के खिलाफ जांच विधिवत की गई? यदि हां तो क्या उनकी बर्खास्तगी सही व न्यायोचित है? यदि नहीं तो वे किस राहत के पात्र हैं

2. Claim statement was filed by the technician, namely, Shri Arvind Wadhwa pleading that he joined service on 18.3.1985. His services were confirmed on 18.9.1996. While on duty he suffered a serious electric shock, for which he was treated by the medical staff of the Aviation Company. Injury sustained by him resulted in pain in his back bone and as such he was treated at JPN Hospital, New Delhi. He reported for his duty on 27.9.1994. However, he was not allowed to join his duties. He sent a letter by post on 25.11.1994. He was dismissed from service *vide* order dated 31.1.1996/9.2.1996 for his alleged unauthorized absence for 246-1/2 days from January, 1993 to 19.8.1994.

3. He projects that contents of the charge-sheet were factually incorrect. In fact no charge-sheet was served upon him. Action of the Aviation Company in issuance of dismissal order, which was followed by an approval application under section 33(2) of the Industrial Disputes Act, 1947 (in short the Act) before National Industrial Tribunal, Mumbai, was pre-meditated, illegal and malafide exercise of power. His services were dispensed with without any proper enquiry and justification. Though he was on duty from 1.3.1994 to 6.3.1994 and from 1.12.1993 to 29.12.1993, yet he was shown absent in the report recorded by the Enquiry Officer. Medical certificates from 22.4.1994 to 30.5.1994 and 14.6.1994 to 27.6.1994 project that he was on sick leave. However, he has been shown absent for that period in the report recorded by the Enquiry Officer. Leave card projects that leaves were sanctioned in his favour from 22.11.1993 to 27.11.1993 and on 16.11.1993 but for that period too he was shown absent. Thus it is evident that the enquiry report was factually incorrect.

4. He went on to plead that charge-sheet dated 31.8.1994/ 19.9.1994, indicates that it was a revised charge-sheet. However, it was not explained as to under what circumstances and whose orders charge-sheet was revised. Charge-sheet dated 27.6.1994 was never served upon him. The Aviation Company had not indicated mode of service of the charge-sheets nor such evidence was produced before the Enquiry Officer. The Enquiry Officer has completely ignored this vital aspect. All of a sudden a show-cause notice dated 26.12.1995, proposing punishment of dismissal from service, was sent to him. *Vide* his reply dated 13.1.1996, he requested the authorities for re-consideration of his case and to accord him a personal hearing. No personal hearing was given to him. Order of dismissal from service was received by him through post.

5. The claimant asserts that the copy of the enquiry report was not served upon him. It is mandatory to serve copy of the enquiry report. He preferred an appeal against the dismissal order, which appeal was rejected in an arbitrary manner, without giving an opportunity of being heard in person. The enquiry report was violative of the principles of natural justice. The act of Aviation Company in dismissing him from service was illegal and invalid, since an industrial dispute was pending before National Industrial Tribunal, Mumbai; and provisions of section 33(2) of the Act were violated. He claimed that an award may be passed in his favour re-instating him in service with continuity and full back wages.

6. Claim was demurred by the Aviation Company pleading that the claimant was served with a charge-sheet dated 27.6.1994, which was revised on 31.8.1994/19.9.1994. Various opportunities were given to the claimant but he opted not to appear before the Enquiry Officer. The Enquiry Officer was constrained to proceed with the matter *ex-parte*. He conducted enquiry in accordance with the principles of natural justice and full opportunity was given to the claimant to present his case but in vain. Charges, served upon the claimant, were actually correct. The Enquiry Officer considered the documents placed on record and recorded findings in the matter. Disciplinary Authority concurred with the findings of the Enquiry Officer and served show-cause notice, calling upon the claimant to explain as to why punishment of dismissal may not be awarded to him. Reply sent by the claimant was found not to be satisfactory. Punishment of dismissal was awarded to him, *vide* order dated 31.1.1996/9.2.1996. Approval of dismissal order was sought from National Industrial Tribunal, Mumbai, under the provisions of section 33(2) of the Act. Enquiry conducted against the claimant was in consonance with the principles of natural justice and fair play. Appeal preferred by him was considered by the Appellate Authority who did not find any merits in the same. Action taken by the Aviation Company was in accordance with law. Claim preferred is liable to be dismissed being devoid of merits, pleads the Aviation Company.

7. *Vide* order No.Z-22019/6/2007-IF(C-II), New Delhi dated 11.02.2008, the appropriate Government transferred the case to Central Government Industrial Tribunal No.2, New Delhi, for adjudication.

8. Appropriate Government re-transferred the matter to this Tribunal for adjudication *vide* order No.Z-22019/6/2007/ IR(C-II), New Delhi dated 30.03.2011, for adjudication.

9. One of the questions referred for adjudication is as to whether enquiry conducted against Shri Wadhwa was legal and justified. Therefore, parties were called upon to lead evidence on virus of enquiry. On consideration of evidence tendered by the claimant as well as testimony of Shri Anil Verma, issue relating to virus of enquiry was answered in favour of Aviation Company, *vide* order dated 23.8.2011.

10. Arguments on proportionality of punishment were heard at the bar. Shri L.D. Wadhwa, father of the claimant, advanced arguments on his behalf. Ms. Poonam Das, authorized representative, presented facts on behalf of the Aviation Company. Written submissions were also filed by the parties. I have given my careful considerations to arguments advanced at the bar and cautiously perused the record. My findings on remaining issues involved in the controversy are as follows.

11. Prior to introduction of section 11A of the Act, adjudicatory powers of the Tribunal were articulated in Buckingham & Carnatak Company [1951 (2) LLJ 314]. Four standards were delineated by the Labour Appellate Tribunal in the above case to render managerial right of taking disciplinary action vulnerable, namely, (i) where there is a want of bonafides or (ii) when It is a case of victimization or unfair labour practice or violation of the principles of natural justice, or (iii) when there is basic error of facts, or (iv) when there has been a perverse finding on the materials. This articulation was adopted by the Apex Court with slight modification in Indian Iron and Steel Company Limited [1958 (1) LLJ 260], without any acknowledgement to the precedent in Buckingham & Carnatic case (supra), wherein it was ruled that the power of the management to direct its own internal administration and discipline was not unlimited and liable to be interfered with by industrial adjudication when a dispute arises to see whether termination of services of a workman is justified and to give appropriate relief. However, it was announced that the jurisdiction of an Industrial Tribunal to interfere with the managerial prerogative of taking disciplinary action is not of appellate nature as the legislature has not chosen to confer such jurisdiction upon it. Hence Tribunal could not substitute its own judgement for that of the management. The Court laid down that in the following circumstances an industrial adjudicator can interfere with the disciplinary action taken by the employer: (1) when there is want of good faith, (2) when there was victimization or unfair labour practice, (3) when the management had been guilty of a basic error or violation of the principles of natural justice, or (4) when on the materials, , the finding was completely baseless or perverse.

12. Enunciation (1) and (2), referred above, are addressed to the *bona fides* of the employer in initiating the action and inflicting the punishment, while postulates (3) and (4) are addressed to domestic enquiry. Therefore, an employer is required to act *bona-fide* in initiating disciplinary action as well as in inflicting the punishment. In initiating the action, the alleged act of misconduct should not be a ruse for something else, such as the trade union activities of the workman or employers dislike of him for some personal reasons. The action should not be motivated by vindictiveness or ulterior purpose, so as to smack for victimization or unfair labour practice. Likewise in the matter of inflicting punishment, the employer should act fairly. In case punishment awarded is so shockingly disproportionate to the act of the misconduct, as no reasonable man would ever impose that itself may lead to an inference of malafides, victimization or unfair labour practice. In holding enquiry, the Enquiry Officer must comply with the rules of natural justice. He must not be a biased person and give reasonable opportunity to both sides for being heard. His findings should not be baseless or perverse.

13. In Ramswarth Sinha (1954 L.A.C. 697) the Labour Appellate Tribunal recognized the right of the management to ask for permission to adduce evidence before the Tribunal to justify its action in a "no enquiry" case. Following that proposition the Apex Court equated the cases of "defective enquiry" with "no enquiry" cases and ruled that in either cases, the Tribunal have jurisdiction to go into the merits of the case on the basis of evidence adduced before it by the parties. Reference can be made to the precedent in Motipur Sugar Factory Pvt. Ltd. [1965 (2) LLJ 162]where the employer had held no enquiry at all before the dismissal and, therefore, adduced evidence to justify its action before the Tribunal, which decision was upheld. The Apex Court discarded the plea on behalf of the workman that since no enquiry at all had been held by the employer, it had no right to adduce evidence to justify its stand before the Tribunal. In Ritz Theatre [1962 (II) LLJ 498] it was ruled by the Supreme Court that the Tribunal would be justified to go to the merits of the case and decide for itself on the basis of the evidence adduced whether the charges have indeed been made out. It announced that it would neither be fair to the management nor fair to the workman himself in such a case that the Tribunal should refuse to take the evidence and thereby drive the management to pass through the whole process of holding the enquiry all over again. Reference can also be made to the precedent in Bharat Sugar Mills Ltd. [1961 (11) LLJ 644].

14. In Delhi Cloth and General Mills Company [1972 (1) LLJ 180], Apex Court considered the catena of decisions over the subject and laid down the following principles:

"(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its

plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When the domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management, However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry, If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management, But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic tribunal being accepted as *prima facie* proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to take a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and dose not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite *suo moto* the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Act.

15. Keeping in view the proposition laid by the Apex Court in Delhi Cloth and General Mills Company (supra), the Parliament inserted section 11-A in the Act, which came into force *w.e.f.* 15th of December,1971. In the statement of objects and reasons for inserting section 11-A, it was stated:

"In Indian Iron and Steel Company Limited and Another *Vs*. Their Workmen (AIR 1958 S.C. 130 at p.138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice, etc., on the part of the management.

2. The International Labour Organisation, in its recommendation (No.119) concerning 'Termination of employment at the initiative of the employer' adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination.. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947……. ".

16. After insertion of section 11-A, the Apex Court summed up the law in the case of Firestone Tyre and Rubber Company [1973 (1) LLJ 278] in the following propositions:

"(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, as employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or *mala fide*.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognized that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot, be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate *Vs*. The workmen, within the judicial decision of a Labour Court or Tribunal".

17. Jurisdiction to interfere with the punishment is also not confined to the case where punishment is shockingly disproportionate to the act of the mis-conduct. The Tribunal has power of substituting its own measure of punishment in place of managerial wisdom. Change in legal position, post introduction of section 11A of the Act, has been effectively summarized in the case of Ambassador Sky Chef (1996 Lab. I.C. 299) wherein High Court of Bombay observed that the section gives specifically two fold powers to an industrial adjudicator: firstly, it is a virtual power of appeal against the findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and conclusion on facts, and secondly, and far more important, it is the power of re-appraisal of quantum of punishment. Now no restriction lies on an industrial adjudicator to interfere with the enquiry only on four grounds, referred above. However, wide discretionary powers with the adjudicator are to be exercised in judicial and judicious manner before it interferes with the order of mis-conduct or punishment.

18. With this prelude, now I would turn to facts of the present controversy. As emerged out of the order dated 23.8.2011, the Tribunal had considered the factum of service

of charge-sheet on the claimant, calling upon him to submit his statement of defence. It was also taken note of that the charge-sheet was specific and un-ambiguous, Enquiry Officer called upon the claimant to put forth his case but in vain. Opportunities were accorded to the claimant to defend himself in the enquiry. Therefore, it is evident that the issues relating to *bonafides* of the Aviation Company and according opportunity of being heard were addressed to and found against the claimant. The claimant also raised questions relating to the competence of Engineering Member to serve charge-sheet and award punishment to him, which were addressed to and answered in the order, referred above. Issue relating to perversity of report of the Enquiry Officer was also answered against him. Thus it is evident that all issues, except issue relating to proportionality of punishment, were adjudicated against the claimant.

19. As record projects, charge-sheet dated 31.8.1994/ 1.9.1994 was served, wherein it is detailed that the claimant remained absent for 246½ days during the year 1993-94, as per details mentioned herein under:—

Year	Month	Date of Absence	No. of days
1993	Jan.	9, 12, 13, 14,19, 20, 21, 22, 25, 28 to 31	13
	Feb.	1 to 6,10, (½ day) of 11,13, ½ day of 15, 16 to 20, 26 to 28	17
	Mar.	1 to 10, 13, 17, 18, 20 to 26, 29 to 31	23
	Apr.	3 to 8,12 to 17, 21 to 29	21
	May	½ day of 20 & 31	01½
	Aug.	½ day of 24 & 31	01½
	Sept.	20 to 25	06
	Nov.	22 to 27	06
	Dec.	02 to 08,10,13 to 28	24
			Total 113 days
1994	Feb.	7 & 8	02
	Mar.	½ day of 3, 4, 5, 15, 19, 20, 21, 22 & 25	08½
	Apr.	2 to 4, 6, 8, 9, 15 to 19, 22 to 30	20
	May	01 to 28	28
	June	06 to 30	25
	July	01 to 31	31
	Aug.	01 to 19	19
			Total 133 ½ days

20. It was alleged that his absence for the period, referred above constitutes an act of mis-conduct as per standing orders. Since the claimant remained absent without leave or over-stayed sanctioned leaves, the Enquiry Officer recorded findings against the claimant, which are detailed as follows:—

> "Enquiry Officer examined the attendance ledger of Shri Arvind Wadhwa in the year 1993-94 and found that the details of absence given in the attendance ledger tallied with those given in the charge-sheet except for the month of December, 1993. Shri Wadhwa was on casual leave on 16.12.1993 whereas he was shown as absent in the charge-sheet. His leave cards covering the period 30.4.1993 to 16.12.1993 (two cards) were also examined. His leave card for the year 1994 was, however, not available."
>
> "His gate attendance card for the year 1993-94 were also examined and it was found that the days of absence shows in the charge-sheet tallied with the dates of absence as per the gate cards except 16.12.1993 when he was on casual leave.
>
> "From therefore-going it is evident that Shri Wadhwa had not applied/sanctioned leave for the period of absence shown in the charge-sheet and this absence tallied with his gate cards for the relevant period."
>
> "From the fore-going it has been established that Shri Arvind Wadhwa worker Technician, staff No. 217506 was guilty of charges leveled against him *vide* charge-sheet No.IGIA-PS-DIS-628 dated 31.8.1994/1.9.1994."

21. During the course of arguments it was highlighted that Shri Wadhwa remained absent in unauthorized manner for 189 days during the period from 4.4.1990 to 20.10.1990. An enquiry was conducted and charges of remaining absent stood proved. Punishment of reduction of basic pay by two stages in the time scale with cumulative effect was awarded to him, *vide* order dated 31.5.1991. He again absented himself in unauthorised manner for 183 days during the period from 30.10.1990 to 31.5.1991. Those charges are also proved in the domestic enquiry. On his assurance that he would improve his attendance in future punishment of reduction of pay by three stages in the time scale with cumulative effect was awarded to him, *vide* order dated 30.11.1993.

22. Aviation Company argues that punishment of dismissal from service was proposed on the claimant and show-cause notice dated 23.4.1993 was given. He assured the Competent Authority *vide* letter dated 23.5.1993 that in future he would improve his attendance and conduct. However, Shri Wadhwa had not shown any improvement and again absented himself for which act of mis-conduct the charge-sheet under reference was served. The Aviation Company claims that punishment awarded to the claimant commensurate to his mis-conduct. In his submissions the claimant could not dispel the facts, presented on behalf of the Aviation Company.

23. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lessor punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab. I.C.817). The discretion to award punishment lessor than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

24. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untramaled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference cannot be made to the precedent in Bhagirath Mal Rainwa [1995 (1) LLJ 960].

25. An employee is under an obligation not to absent himself from work without good cause. Absence without leave is misconduct in industrial employment, warranting disciplinary punishment. Habitual absence from duty without leave has been made a misconduct under Model Standing Orders, framed under Industrial Employment Standing Orders Act, 1946. Likewise, industrial employers also include "absence from duty", without leave in the list of misconduct in their standing orders. Sanction of leave can be a significant defence to misconduct of absence without leave. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. The fact that the claimant was continuously absent from work without leave, on account of his detention in jail for an offence, will not give an immunity to the claimant and the employer will be justified in discharging him from services, announces the Apex Court in Burn & Company, [1959 (1) LLJ 450].

26. In Indian Iron and Steel Company Ltd. [1958 (1) LLJ260] the Apex Court was confronted with a proposition as to whether provisions in the standing orders authorizing the employer to terminate services of its employee on account of absence without leave was an inflexible rule. In that matter seven workmen were absent without leave for 14 consecutive days, as they were in police custody. During police custody they applied for leave which were refused by the company and services of the workmen were terminated under relevant standing order for remaining absent without leave. The Industrial Tribunal took a view that the relevant standing order was not an inflexible rule and mere application for leave was sufficient to arrest the operation of the standing order. In appeal, though the Labour Appellate Tribunal did not maintain the award of the Tribunal on that count, yet it held that in view of the circumstances that the workmen were in custody, the company was not justified in refusing leave. When the matter reached the Apex Court, it set aside the order of the Labour Appellate Tribunal, relying its precedent in Burn & Company Ltd. (supra) and ruled thus:—

> "It is true that the arrested men were not in a position to come to their work, because they had been arrested by the police. This may be unfortunate for them, but it would be unjust to hold that in such circumstances the company must always give leave when an application for leave is made. If a large number of workmen are arrested by the authorities in charge of law and order by raising of their questionable activities in connection with a labour dispute (as in this case), the work of the company will be paralysed if the company is forced to give leave to all of them for more or less indefinite period. Such a principle will not be just, nor will it restore harmony between labour and capital or ensure normal flow of production. It is immaterial whether the charges on which the workmen are arrested by the police are ultimately proved or not in a court of law. The company must carry on its work and may find it

impossible to do so if a large number of workmen are absent. Whether in such circumstances leave should be granted or not must be left to the discretion of the employer. It may be rightly accepted that if the workmen are arrested at the instance of the company for the purpose of victimization and in order to get rid of them on the ostensible pretext of continued absence, the position will be different. It will then be a colorable or *malafide* exercise of power under the relevant standing order, that however, is not the case here."

27. Defence open to an employee, against charge of absence without leave, is that the absence was on account of circumstances beyond his control. For instance, where absence of a workman was on account of his sudden or serious illness or serious illness of a relation that would be an extenuating circumstance which the employer will have to take into consideration. However, if a workman feigns sickness in order to avoid duty by producing a false medical certificate, this would itself be a serious act of misconduct. In Tata Engineering and Locomotive Company Ltd., [1990 (1) LLJ 403] the Patna High Court was addressed to a proposition where workman absented himself without leave or permission for a considerable period. After about 20 days of his absence, a memo and charge sheet was issued, notifying that a domestic enquiry would be held in the matter. The workman failed to appear in a domestic enquiry and the Enquiry Officer conducted the proceedings exparte. On consideration of the report of the Enquiry Officer, the Disciplinary Authority discharged him from service. Later on workman informed the management that he was arrested by the police in connection with a murder case and requested to allow him to join duty. On refusal, an industrial dispute was raised. A High Court placed reliance on the precedent in Indian Iron & Steel Company (supra) and Burn & Company (supra) and ruled that the discharge of the workman was valid and justified for continuous absence without permission or leave.

28. Absence without leave constitutes a misconduct justifying disciplinary action against the delinquent workman. Punishment can only be imposed either by complying with the procedure prescribed by the standing orders of the establishment, if any, or the rules of natural justice. Normally punishment should be inflicted after the workman has been found guilty of the misconduct, after holding a domestic enquiry. Reference can be made to Mufatlal Narain Dass Barot [1966 (1) LLJ 437] and Kalika Prasad Srivastava (1987 Lab.I.C. 307). Quantum of punishment in case of misconduct for absence from duty without leave would depend upon the facts of each case. In order to justify the extreme penalty of discharge or dismissal, it is to be proved that the workman remained absent without leave for an inordinate long period. In Bokaro Steel Plant, Steel Authority of India Ltd (2007 L.L.R. 238) removal of workman from service who remained unauthorisedly absent for a period of three months was held to be justified. In Sushil Kumar (2007 L.L.R. 45) it was ruled that absence, which is continuous for a long period, amounts to serious misconduct to justify dismissal from service. In Borman (2003 L.L.R. 364) 62 days absence of workman was held to be justified for his dismissal from service.

29. Here in the case the claimant absented from his duties for a long period, without any intimation. It was not for the first time. In past too, he absented himself for 183 days for which he was punished after conducting a domestic enquiry. He again absented for a period of 183 days. The Aviation Company conducted an enquiry. When charges stood established, show casue notice was served calling upon him to explain as to why he should not be dismissed form service. On his assurances that in future he will improve his conduct, punishment of dismissal was not awarded to him. However he did not mend his wags. He again absented for a period of more than 240 days, without any intimation. Thus it is clear that he is habitual in absenting himself from his duties for inordinate long periods. These facts justify action of the Aviation Company in award of punishment of dismissal to the claimant. Therefore, one cannot attribute illegality or unjustifiability to the action of the Aviation Company.

30. In view of the foregoing discussion it is evident that dismissal of the claimant from services on account of his long unauthorised absence is found to be in consonance with law and principles of natural justice. The claimant is not entitled to any relief. His claim statement is liable to be discarded, being devoid of merits. Consequently his claim statement is discarded. An award is, accordingly, passed in favour of the Aviation Company. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated: 16.11.2012

नई दिल्ली, 27 मई, 2013

का.आ. 1168.—औद्योगिक अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स लफ्थान्सा जर्मन एयरलाइन्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 77/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 02-04-2013 को प्राप्त हुआ था।

[सं. एल-11012/72/1999-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th May, 2013

S.O. 1168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the Award (Ref. No. 77/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Lufthansa German Airlines and their workmen, received by the Central Government on 02-04-2013.

[No. L-11012/72/1999-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE DR.R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D.No.77/2011

The President,
Lufthansa German Airlines
Employees Union (Regd.),
11/48, 1st Floor, Malcha Marg,
Chankaya Puri, New Delhi.

...Workmarn

Versus

1. The General Manager
(Finance & Personal),
South Asia, Lufthansa German Airlines,
56, Janpath, New Delhi-110001.

2. The Station Manager,
I.G.I. Airport,
Lufthansa German Airlines,
Terminal-II, International Airport,
New Delhi.

...Management

AWARD

Services of two employees, working as supervisors, with Lufthansa German Airlines (in short the Airlines), were dispensed with by the Airlines under Clause 8.2.4 of the Rules of Employment (in short the Service Rules) on 17.05.1999. While dispensing with their services, the Airlines had paid them one month's salary, in lieu of notice. They questioned the very right of the Airlines to terminate their services under clause 8.2.4 of the Service Rules, claiming that being permanent employees their services cannot be done away in an unceremonial way. They demanded reinstatement in service also, which demand was not conceded to by the Airlines. Feeling aggrieved by that act of the Airlines, they raised an industrial dispute before the Conciliation Officer. Since the Airlines contested their claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-11012/72/99-1R(C-I), New Delhi dated 24-11-1999 with following terms :

> "Whether termination of services of S/Shri Sudhin Sarkar and Shri A.B. Baretto, supervisors, by Lufthansa German Airlines under clause 8.2.4 of Rules of Employment of the company without domestic enquiry is legal and justified? If not, to what relief the workmen are entitled to?"

2. Claim statement was filed by and on behalf of the supervisors, namely, Shri Sudhin Sarkar and Shri A.B. Baretto pleading therein that Shri Sudhin Sarkar joined services of the Airlines as Passenger/Operations (Airport) agent on 01.11.1988. He was confirmed in service with effect from 01.05.1989. He was upgraded to the scale of E1 Grade with effect from 01.01.1991. He was given title of supervisor with effect from 01.01.1993. His basic salary was also increased from scale E 1/4 Grade to the scale of E 2/3 Grade. His salary was again increased *vide* letter dated 17.11.1993 from scale E 2/3 Grade to Scale F2 Grade with effect from 01.11.1993. It has been pleaded that Shri A.B. Baretto joined the Airlines on 01.01.1979 as passenger handling agent. His services were confirmed with effect from 05.06.1979. He was upgraded to the scale of E 1/4 Grade with effect from 01.01.1981. He was again upgraded to the scale of E 2/7 Grade with effect from 01.05.1985. He was given a title of supervisor with effect from 01.11.1991. Subsequently, his salary was increased to F9 Grade from E 2/12 Grade.

3. The claimants plead that they are governed by service rules, wherein various conditions such as working time, holidays, overtime payments, remuneration, compensation for overtime/night work, leave, provident fund, gratuity etc. are laid down. In respect of terms of employment, which are not provided in service rules, they are governed by customs and practice generally followed in the trade, industrial laws, rules and regulations applicable to workmen in the country. Any rule, in the service rules, if it is contrary to statutory law applicable to workmen in the country would give way to the statutory rule. They claim that they were given title of supervisor, while they did not have any power or authority to sanction leave to any employee, sign duty roster for the employees, issue show cause notice or charge sheet to any employee, call for any explanation, order suspension, issue warning letters or order of termination to any employee. They did not have any authority to exercise powers as supervisors. They were workmen and had no authority over any of the workmen or on their functions.

4. They plead that suddenly the Airlines issued letter dated 17.05.1999 to them terminating their services in terms of clause 8.2.4 of the service rules and section 30 of the Delhi Shops and Establishment Act, by paying them one month's salary in lieu of notice. No reason for termination of their services was detailed therein. No explanation was called nor any enquiry was held against them. They were permanent employees and their services could not be terminated simpliciter in the manner in which it was done by the Airlines. *Vide* letter dated 21.05.1999, they questioned that act and demanded reinstatement in service. They claim that clause 8.2.4. of the service rules is opposed to public policy and section 21 of the Contract Act, hence it is null and void. It was so done by the Airlines since it wanted to break the union or weaken it. The Airlines intended to transfer or contract out whole or part of its business. The claimants plead that the Airlines had tried to victimise them since they were defending Shri P. V. Chandrashekhar, the President of Lufthansa German Airlines Employees Union against whom a domestic enquiry was constituted. A claim has been made that the Airlines be directed to withdraw letter of termination dated 17.07.1999 and reinstate them in service with continuity and full back wages.

5. Claim was demurred by the Airlines pleading that the claimants were employed as supervisors at the time of termination of their services. Shri Sudhin Sarkar was drawing emoluments of Rs. 25,301.00 per month, while Shri A.B. Baretto was drawing a total sum of Rs. 28,123.00 per month, inclusive of fixed allowances. In their capacities as supervisors, they have been supervising the flights, updating duty roster, allocating duties to the staff at the Airport for discharge of various operational functions and supervising incoming and outgoing flights. They had to ensure that check in, departure, arrival, ramp, load sheet, catering etc. go as per schedule. They were also required to ensure cleanliness of the aircraft and to supervise the same. All employees, engaged in aforesaid operations, were working directly under their supervision, direction and control. By virtue of their job responsibilities, they were resolving complaints of the passengers, taking decisions with regard to waiver of excess baggage and upgrade tickets from economy to business class. They were also empowered and authorized to sanction overtime to the staff working under them. There were about 13 employees working directly under their supervision and control. As such, the claimants were performing exclusively supervisory duties.

6. The Airlines pleads that in absence of Deputy Station Manager, the claimants have been acting and working as Duty Manager with all requisite powers of the Manager. They were imparted various training programmes meant only for supervisors and above. Telephone facility was provided at their residence which is available only in case of supervisors and above categories of officers. Shri Sudhin Sarkar was also responsible for station operation control by conducting random checks of handling of flights. As such, he was required to go to the aircraft and check all sensitive operation areas and ensure that pallets and containers were properly latched.

7. The Airlines further pleads that the claimants were governed by the service rules wherein classification of employees in various groups have been divided in Group A to Group G. The claimants were in Group F and their job description have been detailed in service rules as follows:

"Group F Employees who as a result of their thorough specialized knowledge in a wide filed of working:

a. and their special ability are entrusted with the supervisory duties(functional responsibility and disciplinary authority) towards employees upto Group E 2 or

b. are entrusted with more difficult and complex task from within the scope of work of employees of Group E 2 combined with the functional responsibility and/or functional authority towards employees upto Group E 1, e.g. supervisory, passenger/cargo sales, passenger/cargo service, station operations with completed supervisory course..."

8. There were a number of employees working under them and their authority. They were the disciplinary authority of the employees upto Group E 2 and as such were not the workmen within the meaning of section 2(s) of the Industrial Disputes Act, 1947 (in short the Act). The Airlines urges that the dispute referred is incompetent and this Tribunal has no jurisdiction to adjudicate the dispute. The claimants were promoted as supervisors and on their promotion they were placed in supervisory grade of pay. The service rules are not contrary to any statutory law. Services of the claimant were terminated in accordance with clause 8.2.4 of the service rules read with section 30 of the Delhi Shops and Establishment Act. The reasons, which formed motive of termination of their service, were also communicated to them. The Airlines that it rightly came to a conclusion that confidence cannot longer be reposed in the claimants. Even though they could have been dismissed from service, but taking a lenient view, their services were terminated in accordance with service rules. Clause 8.2.4 of the service rules empowered the Airlines to terminate their services. It is disputed that the claimants were victimised since they were defending Shri P.V. Chandrashekhar in the domestic enquiry. It has been denied that the Airlines intended to transfer or contact out the whole or part of its business to some other private company. The Airlines pleads that the claim put forward is unfounded, hence it may be dismissed.

9. In rejoinder, the claimants reiterate facts pleaded in the claim statement.

10. On pleadings of the parties, followings issues were settled by my learned predecessor:

(i) Whether the claimants are not workmen within the meaning of section 2(s) of the Industrial Disputes Act, 1947? If yes, its effects.

(ii) As per terms of reference.

11. *Vide* order No. Z-22019/6/2007-IR (C-II), New Delhi dated 11.02.2008, the case was transferred by the appropriate Government to the Central Government Industrial Tribunal No.II, New Delhi for adjudication. It was retransferred to this Tribunal for adjudication, *vide* order No. Z-22019/6/2007-IR (C-II), New Delhi dated 30.03.2011, by the appropriate Government.

12. Claimants, namely, Shri B.B. Baretto and Shri Sudhin Sarkar entered the witness box to testify facts to substantiate their claim. Shri Parvez Khan and Shri G. Raj Kumar were examined by the Airlines to project its defence. No other witness was examined by either of the parties.

13. Arguments were heard at the bar. Shri Harish Sharma, authorized representative, advanced arguments on behalf of the claimants. Shri S.K. Bhasin, authorised representative, raised submissions on behalf of the Airlines. Written submissions were also filed by the parties. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

Issue No. 1.

14. At the outset, Shri Bhasin urged that the claimants were working as supervisors and drawing wages exceeding Rs.1600.00 per mensum. He presents that since they were employed in supervisory capacity and drawing wages above the ceiling provided by the Act, they fall within the exception enacted in third limb of section 2(s) of the Act. According to Shri Bhasin, the claimants were not workmen and the appropriate Government was incompetent to refer the dispute to this Tribunal for adjudication. He argued that this Tribunal lacks jurisdiction to adjudicate the dispute. Contra to it, Shri Sharma presents that nomenclature of supervisor was decorative and in fact the claimants were exercising manual duties. He presents that a decorative title would not rob the claimants of their status of workmen. According to him, the reference was within the competence of the appropriate Government and this Tribunal is competent to adjudicate it.

15. The Tribunal is the creature of the Act, hence its jurisdiction is circumscribed by the Act. Its adjudication must, therefore be confined to the perimeter of the provisions of the Act. As per the scheme of the Act, the Tribunal has to determine the dispute referred to it. Section 10(4) of the Act permits the Tribunal to decide only disputes or points referred to it and matters incidental thereto. Thus, the Tribunal cannot go beyond the terms of reference. For articulation of an industrial dispute, its adjudication is to be confined only to :

(a) the points specified in the reference, and

(b) the matters incidental thereto.

16. The words 'incidental thereto' occurring in section 10(4) of the Act do not have the same meaning as the words "appearing to be connected with or relevant to" used by the legislature in clauses (b), (c) and (d) of Section 10(1) of the Act. The matters covered by the latter expression must be specifically referred for adjudication while the matter covered by former expression need not be specifically referred or they can be adjudicated upon as a part of the main dispute. For instance, on an industrial dispute being referred to it, the Tribunal has jurisdiction to determine whether on the facts placed before it, an 'industrial dispute' within the meaning of section 2(k) has really arisen, or the concerned persons are 'workmen' as defined in section 2(s) or a particular undertaking is an 'industry' within the meaning of section 2(j) of the Act or such industry is a live industry or a closed industry. Such questions can be validly examined and adjudicated upon by the Tribunal as matters incidental to the points of dispute, specified in the order of reference. Therefore, the question raised by the Airlines is an incidental question and can be adjudicated by the Tribunal, while articulating the dispute.

17. In order to determine whether an employee comes within the definition of a workman, it would be expedient to construe the definition of the term. The term "workman" has been defined by section 2(s) of the Act, which definition is reproduced thus:

"(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person —

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950(46 of 1950) or the Navy Act, 1957 (62 of 1957), or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is, employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

18. The first part of the definition gives the statutory meaning of the term workman. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or. (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purposes of any proceedings under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub-section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

19. Merely performing some supervisory duties will not take out an employee out of the ambit of definition of workman. The word 'supervision' means to oversee or to look after. Supervision which is relevant in this connection is the supervision done by an employee in a higher position over the employees in the lower position. Supervision may be in relation to the work or in relation to the person. The word 'supervisory' as used in section 2(s) of the Act does not relate to supervision of an automatic plant. Many machines run automatically on power. They do not have to be run by human energy. Their running and functioning has to be watched and repaired if anything goes wrong. A person who attends to such machines may either do technical or manual work within the meaning of section 2(s) of the Act. But he does not do supervisory work merely because he looks after the machine. The essence of supervisory nature of work under section 2(s) of the Act is the supervision by one person over the work of another. See Blue Star Ltd. [1975 (31) FLR 102].

20. A person can be said to be a supervisor if there are persons working under him, over whose work he has to keep a watch. In other words, he is that person who examines and keeps a watch over the work of his subordinates and if they err in any way, corrects them. It is his duty to see that the work in any industrial unit is done in accordance with the manual, if there is one, or in accordance with the usual procedure. It is not his function to bring about any innovation. It is not his function to take any managerial decision but it is his duty to see that the persons over whom he is supposed to supervise the work assigned to them, they work according to rules and regulations. The central concept of supervision is the fact that there are certain persons working under him. The essence of supervisory work is the supervision by one person over the work of others. For exercising supervisory powers, it may often be necessary that the supervisor himself must have technical expertise, otherwise he may not be in a position to exercise proper supervision of the workmen handling sophisticated plants and machines. A supervisor need not be a manager or an administrator. He can be a workman so long as he does not exceed the wage limit of Rs.1600.00 per month and irrespective of his salary, is not a workman who is to discharge functions mainly of managerial nature by reason of the duties attached to his office or powers vested in him.

21. A person cannot be said to be working in a supervisory capacity merely because he used to supervise a person who helps him in doing the work, which he himself is to perform. For instance, a clerk who has been given the assistance of the peon cannot be said to be working in a supervisory capacity. When one talks of a person working as supervisor, one understands it to mean a person who is watching the work being done by others to see that it is being done properly. See Mathur Aviation [1977(II) LLJ 225]. Thus in determining the status of an employee, his designation is not decisive. What determines the status is the consideration of the nature of his duties and functions assigned to him. A supervisor should occupy a position of command or decision and should be authorised to act in certain matters within the limits of his authority without the sanction of the Manager or other supervisors. In the absence of precise and positive evidence to prove the exact nature of work which the employee was performing, it cannot be held that he was doing administrative or supervisory work.

22. In affidavit Ex. WW1/A, tendered as evidence, Shri A.B. Baretto unfolds that service rules proved as Ex. WW1/4 lay down various conditions such as working time of employees, holidays, overtime payment, remuneration, compensation for overtime/night work, leaves, gratuity etc. These service rules govern all employees in the category of workmen upto Grade G but do not govern officers cadre. Though he was given title of supervisor, but without any power or authority of supervisor. On the same lines

Shri Sudhin Sarkar details facts in his affidavit Ex. WW2/A, which was tendered by him as evidence. However, during the course of their cross examination, they conced that they used to supervise flights as supervisors. According to them, it was part of their job to supervise flights. They used to assign duties to subordinate employees to carry out different operations in flight handling. Both of them admit that they used to brief employees before arrival of flight. According to them, they used to ensure that all operation of flight handling should be completed within scheduled time so that flight may take off in time. It has been admitted by them that they used to exercise powers to waive excess baggage and upgrade ticket from economic class to business class. They used to write details of overtime work performed by the employees on their attendance sheet. They had verified overtime work performed by the employees on Sheet Ex. WW1/M1 to Ex. WW1/M2, Ex. WW2/M6, Ex. WW2/M7 respectively. According to them they were competent to recommend leaves for their employees. They used to conduct surprise checks of flight handling operations. Shri Baretto admits that letter Ex, WW1/7 was signed by him for the Station Manager. He had signed Ex. WW1/M8 to Ex. WW1/M$ for the Airlines. Both of them candidly admit that telephone facilities were provided by the Airlines at their residence.

23. Shri Parvez Khan unfolds in his affidavit Ex. MW/A, tendered as evidence, that Shri Sudhin Sarkar and Shri A.B. Baretto were supervising flights as part of their duties. They were exclusively discharging duties of supervisory and administrative in nature. They were required to supervise incoming and outgoing flights and to ensure its arrival, check in, departure, arrival, ramp load sheet and catering etc. so that it may go according to the schedule. It was also part of their duties to ensure cleanliness of the aircraft and to supervise the same. They were authorised and empowered to take decision with regard to waiving of excess baggage, upgrade tickets from economy to business class, recommend leaves to the staff working under them and sanction overtime payment for them. There were 13 employees, who were directly working under supervision and control of the claimants. During course of cross examination, he concedes that in service rules, classification of employees have been made from Group A to Group G. Airlines used to settle service conditions of employees from Group A to Group G through settlement with the union. Settlement Ex. WW1/8 to Ex. WW1/10 were entered into by the Airlines with the union.

24. In affidavit, Ex. MW2/A, tendered as evidence, Shri G. Rajkumar details those very facts as unfolded by Shri Khan. According to him claimants were supervisors under whom 13 employees were working. However, during course of his cross examination, he also concedes that service conditions of the claimants were settled by the Airlines through settlement entered into with the union. Service conditions of the workmen are recorded in Ex. WW2/4. He hastens to add that service conditions of employees superior to the category of workmen were also recorded in Ex. WW2/4.

25. When facts unfolded by the claimants, Shri Parvez Khan and Shri G. Rajkumar are closely appreciated, it came to light that the claimants were entrusted with supervisory duties (functional responsibility and the disciplinary authority) on employees upto Group E-2 and entrusted with more complex task within the scope of work of employees of Group E-2 combined with functional responsibilities and /or functional authority for employees upto Group E-2, besides supervisory duties towards passenger/cargo sales, passenger/cargo service and station operations. To perform these duties, claimants were allocating duties to 13 employees working under them. They used to supervise work of those employees. Claimants supervise flights in their capacity of supervisors. They used to assign duties in respect of flight handling operations to the employees working under them. They used to brief employees and ensure that flight handling operating were carried out within the scheduled time. Besides these supervisory duties, they used to recommend overtime to their subordinates on their attendance sheets and recommend leaves for them. Claimants were competent to exercise authority to waive excess baggage, upgrade tickets from economy to business class and settle complaints of customers. Therefore, it becomes crystal clear from duties performed by the claimants that they used to supervise work of 13 employees who were working under them. They used to keep watch on the work performed by their subordinates, besides making them to work in scheduled time. Surprise checks of flight operations were made by them with a view to correct mistakes of their subordinates. Thus, it is emerging over the record that duties performed by the claimants were of supervisory in nature.

26. As pointed out above, mere performance of supervisory duties would not take out an employee from the definition of workmen. To push him within the exceptions contained in third limb of section 2(s) of the Act, it is to be established that such employee draws more than Rs. 1600.00 per mensum as his wages. Here in the case, Shri Sudhin Sarkar was drawing emolument of Rs. 25,301.00 per mensum, while Shri A.B. Baretto, was drawing total emoluments of Rs. 28,123.00 per mensum inclusive of fixed allowances. Thus it is apparent that the Airlines could bring it over the record that duties performed by the claimants were of supervisory in nature and they were drawing more than Rs.1600.00 per month as their wages. Consequently, the Airlines had been able to project that the claimants were supervisors.

27. There is other facet of the coin. The Airlines represented to the claimants that their status was of workman. As proved settlements Ex. WW1/8A, Ex. WW1/9 and Ex. WW2/10 were entered into between the Airlines and the union, on the strength of which increase in basic

salary of the employees of category A to G were made from time to time. It is also not disputed on behalf of the Airlines that the union used to enter into settlement in respect of wages and service conditions for the employees of workmen category only. Job clarification detailed in Appendix 1B, annexed with service rules Ex. WW1/4, makes it apparent that this classification was for clerical staff. When gloss is made on this classification, all employees from Group A to Group G have been dealt with and duties performed by them has been detailed therein. In appendix 1C, job classification for auxiliary staff has been provided. These propositions make it apparent that service rules specifically mention that rights such as overtime, conveyance, medical and other conditions of service are only available for workmen. Clause 8.3.3 of services rules Ex. WW1/4 stipulates that Airlines may observe respective regulations of the Industrial Employment (Standing Orders) Act, 1946 concerning cases of misconduct. Therefore, it is crystal clear that the Airlines represented to the claimants that they were treated as workmen within the meaning of section 2(s) of the Act. When this representation was made to the claimant, by the Airlines in service rules proved as Ex. WW1/4 and by their act and conduct of entering into settlement relating to their wages with the union, now the Airlines cannot be allowed to approbate and reprobate facts. It is apparent that the Airlines never intended to treat the claimants as supervisors with a view to exclude them from the ambit of the definition of workman, as enacted in section 2(s) of the Act. Consequently, the fact that the claimants performed supervisory functions would not oust them out of the arena of industrial laws. By its own representation, the Airlines made them well, aware that they are treated as workman. Status of workman, clothed on them by the Airlines, cannot be taken away at this juncture when they seek redressal of their grievances from this Tribunal. In view of these complex proposition of facts, it is announced that the claimants do fall within the ambit of workman as enacted by section 2(s) of the Act. Objection raised by the Airlines is brushed aside. Issue is, therefore, answered in favour of the claimants.

Issue No.2

28. Ex. WW1/4 enlists conditions of service applicable to the workmen of the category claimants, when they were in the service of the Airlines. When Ex. WW1/8A, Ex. WW1/9 and Ex. WW2/10 were signed by the unions and the Airlines, it was agreed upon that remaining clauses and contents of the service rules, other than those narrated in above documents, shall remain unchanged. Thus, it is crystal clear that Ex. WW1/4 governs service conditions of the claimants. Clause 8 of Ex. WW1/4 deals with termination of employment. It speaks of retirement age, ordinary termination, and extraordinary dismissal from service. For sake of convenience, circumstances under which ordinary termination of an employee can take place are extracted thus:

"8. TERMINATION OF EMPLOYMENT

8.1 Retirement Age

8.1.1. The employment shall terminate, without the necessity of any prior notice in respect thereof, at the end of the month in which the employee completes his/her 60th year of age.

8.1.2 Extension of employment shall only be possible if agreed in writing between the Company and the employee.

8.2 Ordinary Termination.

8.2.1 During the probationary period, the Contract of Employment may be terminated by either party with prior notice of seven calendar days, and during the first month with prior notice of one day, without assigning any reason for such termination.

8.2.2. During the probationary period, the salary will be deemed to accrue from day to day and in the event of a discharge within any particular month of the probationary period, the employee will only be entitled to the salary for the number of days actually worked.

8.2.3 In all other cases, either party shall give the other party prior notice, in writing, by giving reasons, terminating the employment at the end of the following month.

8.2.4 Without prejudice to the provisions mentioned above, the Company may terminate the contract by paying salary in lieu of notice and conversely it may accept resignation of the employee by deducting salary in lieu of notice from any dues payable to the employee.

8.2.5 Notice of termination of employment shall be given in writing. It shall become effective from the date of delivery to the other party by registered post or upon personal receipt. The period of notice will commence on the working day following the date of receipt of the notice."

29. Ex. WW1/4 are rules governing service conditions of the claimants. Admittedly services of the claimants were dispensed with by the Airlines vide letter dated 17.05.1999 on payment of one months' salary in lieu of notice. Question would emerge as to whether termination of services of the claimants amount to retrenchment. For an answer to this proposition, definition of the term retrenchment, enacted under section 2(oo) of the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

30. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill-health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. (1979 (I) LLJ 1) and Mahabir (1979 (II) LLJ 363).

31. Sub-Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non- renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. Thus "non-renewal of contract of employment" pre-supposes an existing contract of employment, which is not renewed. When services of an employee is terminated on account of non- renewal of contract of employment, between the employer and the workman, it does not amount to retrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated, under this part too, would not amount to retrenchment. However this sub-clause, being in the nature of an exception to clause (oo) of section 2 of the Act, is ruled to be construed strictly when contractual agreement is used as *modus operandi* to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. See Shailendra Nath Shukla (1987 Lab. I.C. 1607), Dilip Hanumantrao Shrike (1990 Lab. I.C. 100) and Balbir Singh (1990 (1) LLJ. 443). On review of law laid by the Apex Court and various High Courts, a single Judge of the Madhya Pradesh High Court, in Madhya Pradesh Bank Karamchari Sangh (1996 Lab. I.C. 1161) has laid following principles of interpretation and application of sub-clause (bb) of clause (oo) of section 2 of the Act:

"(i) that the provisions of section 2(oo)(bb) are to be construed benevolently in favour of the workman,

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under section 2(oo)(bb),

(iii) that the provisions of section 2 (oo)(bb) are not to be interpreted in the manner which may stifle the main provision,

(iv) that if the workman continues in service, the non-renewal of the contract can be deemed as *mala fide* and it may amount to be a fraud on statute;

(v) that there would be wrong presumption of non-applicability of section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

32. Whether provisions of retrenchment, enacted in the Act, provide for any security of tenure? Answer lies in negative. Provisions of retrenchment provide for certain benefits to a workman in case of termination of his service, falling within the ambit of definition of retrenchment. On compliance of the requirements of section 25F or 25N and 25G of the Act, it is open to the employer to retrench a workman.

33. Termination of service of an employee during the period of probation was held to be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in C.M.Venugopal (1994 (1) LLJ 597). As per facts of the case, Regulation 14 of the Life Insurance Corporation of India (Staff) Regulation 1962 empowered the Corporation to terminate the service of an employee within the period of probation. The employee was put on probation for a period of one year, which was extended by another year. Since he could not achieve the target to earn confirmation, his service was terminated in terms of Regulation 14 as well as order of appointment. The Apex Court ruled that the case was covered by the exception contained in sub-clause (bb), hence it was not retrenchment.

34. In Morinda Co-operative Sugar Mills Ltd. (1996 Lab. I.C. 221) a sugar factory used to employ certain number of workmen during crushing season and at the end to the crushing season their employment used to cease. The Supreme Court held that despite the fact that the workmen worked for more than 240 days in a year, cessation of their employment at the end of crushing season would not amount to retrenchment in view of the provisions of sub-clause (bb) of section 2(oo) of the Act. It was observed as follows:

> "4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.
>
> 5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in sub-clause (bb) of section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated herein before and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work.

35. Above legal position was reiterated by the Apex Court in Anil Bapurao Kanase (1997 (10) S.C.C. 599) wherein it was noted as follows:

> "3. The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28.3.1995 in Writ Petition No.488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Coop. Sugar Mills Ltd. V. Ram Kishan in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing, in para 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per sub-clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above".
>
> 36. In Harmohinder Singh [2001 (5) S.C.C. 540] an employee was appointed as a salesman by Kharga canteen on 1.6.74 and subsequently as a cashier on 9.8.75. The letter of appointment and Standing Orders, *inter alia*, provided that his service could be terminated by one month's notice by either party. He was served with a notice to the effect that his service would be relinquished with effect from 30.6.1989. Relying precedent in Uptron India Ltd. [1998 (6) S.C.C. 538] the Apex Court ruled that contract of service for a fixed term are excluded from the ambit of retrenchment. Decision in Balbir Singh (supra) was held to be erroneous. It was also ruled that principles of natural justice are not applicable where termination takes place on expiry of contract of service.

37. In Batala Coop. Sugar Mills Ltd. [2005 (8) S.C.C. 481] an employee was engaged on casual basis on daily wages for specific work and for a specific period. He was engaged on 1.4.1986 and worked upto 12.2.94. The Labour Court concluded that termination of his services was violative of provisions of section 25-F of the Act, hence ordered for his reinstatement with 50% back wages. Relying precedents in Morinda Coop. Sugar Mills (supra) and Anil Bapurao Kanase (supra) the Apex Court ruled that since his engagement was for a specific period and specific work, relief granted to him by the Labour Court can not be maintained.

38. The Apex Court dealt with such a situation again in Darbara Singh (2006 LLR 68) wherein an employee was appointed by the Punjab State Electricity Board as peon on daily wage basis from 8.1.88 to 29.2.88. His services were extend from time to time and finally dispensed with in June 1989. The Supreme Court ruled that engagement of Darbara Singh was for a specific period and conditional. His termination did not amount to retrenchment. His case was found to be covered under exception contained in sub-clause (bb) of section 2(oo) of the Act. In Kishore Chand Samal (2006 LLR 65), same view was maintained by the Apex Court. It was ruled therein that the precedent in S.M. Nilajkar [2003 (II) LLJ 359] has no application to the controversy since it was ruled therein that mere mention about the engagement being temporary without indication of any period attracts section 25-F of the Act if it is proved that the concerned workman had worked continuously for more than 240 days. Case of Darbara Singh and

Kishan Chand Samal were found to be relating to fixed term of appointment.

39. In BSES Yamuna Power Ltd. (2006 LLR 1144) Rakesh Kumar was appointed as Copyist on 29.9.89, initially for a period of three months as a daily wager. His term of appointment was extended up to 20.9.90. No further extension was given and his services were dispensed with on 20.9.90. On consideration of facts and law High Court of Delhi has observed thus:

> "...In the present case, the respondent was appointed as a copyist for totalling the accounts of ledger for the year 1986-87 and then for 1987-88. His initial appointment was for the period of three months. It was extended from time to time and no extension was given after 20th September, 1990. He was appointed without any regular process of appointment, purely casual and on temporary basis for specific work of totalling of ledger. When this work was over, no extension was given. I consider that appointment as that of the respondent is squarely covered under section 2(oo)(bb) of the Act. Giving of non extension did not amount to termination of service, it was not a case of retrenchment".

40. Precedents, handed down by Allahabad High Court in Shailendra Nath Shukla (supra), Bombay High Court in Dilip Hanumantrao Shirke (supra), Punjab & Haryana High Court in Balbir Singh (supra) and Madhya Pradesh High Court in Madhya Pradesh Bank Karamchari Sangh (supra) castrate sub-clause (bb) of section 2(oo) of the Act. Ratio decidendi in these precedents abrogates statutory provisions of sub-clause (bb) of section 2 (oo) of the Act without even discussing the legality or constitutional validity of the clause. On the other hand the Apex Court in C.M.Venugopal (supra), Morinda Co-operative Sugar Mills Ltd. (supra), Anil Bapurao Kanase (supra), Harmohinder Singh (supra), Batala Coop. Sugar Mills Ltd. (supra), Darbara Singh (supra) and Kishore Chand Samal (supra) and High Court of Delhi in BSES Yamuna Power Ltd. (supra) spoke that case of an employee, appointed for a specific period which was extended from time to time, would be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in case his services are dispensed with as a result of non-renewal of the contract of employment between him and his employer, on its expiry or termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The law, so laid, holds the water and would be applied to the claimants.

41. The Airlines asserts that services of the claimants were dispensed with in terms of stipulation contained in clause 8.2.4 of the service rules, which act is covered within sub-clause (bb) of section 2(oo) of the Act. Shri Bhasin argued that the act of the Airlines does not amount to retrenchment, which will denude the claimants from claiming any right or privilege under the provisions of the Act. Shri Sharma could not dispel the facts in that regard. Thus application of clause 8.2.4 of the service rules would push the claimants out of ambit of safeguards provided by the Act.

42. There is other facet of the coin. It has been argued on behalf of the claimants that clause 8.2.4 is arbitrarily worded in favour of the Airlines. According to them, it gives plenty of powers to the Airlines to dispense with services or even termination of employees. They claim that this Tribunal may use its powers, available to it for adjudication of an industrial dispute and create new obligations by modifying clause 8.2.4 of Ex. WW1/4. On the other hand, Airlines dispels submissions made by Shri Sharma. Provisions of the Act confers wide powers and jurisdiction upon adjudicatory authorities to make appropriate award in determining industrial disputes brought before them. The ultimate job of an industrial adjudicator is to help the parties to take steps for growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudicators on principles of fair play and justice. The Apex Court in Bharat Bank Ltd. [1950(1) LLJ 921] ruled that the Tribunal is not merely to interpret or give effect to contractual obligation between the parties, but can confer right and privileges on either party which it considers reasonable and proper, though may not be within the terms of any existing agreement. Its jurisdiction is much wider and can be reasonably exercised with the object of keeping industrial peace and progress. The observations made by the Court are extracted thus:

> "In settling disputes between employees and the workmen, functions of the Tribunal is not confined to administration of justice in accordance with laws. It can confer rights and privileges to either parties which it considers reasonable and proper though they may not be within the terms of any existing agreement. It is not merely to interpret or give effect to the contractual rules and obligations of the parties. It can create new rules and obligations between them if it considers essential for keeping industrial peace."

43. Industrial adjudication is always a matter of making adjustment between two competing claimants. Approach of an industrial adjudicator is to be necessarily pragmatic and should not unduly be influenced by academic question of law and should make an attempt to deal with merits of each case according to facts and circumstances. While adjudicating disputes, Tribunal cannot and should not ignore claim of social justice. For consideration of aspects of social justice, the Tribunal has to keep in mind that the Act is a beneficiary legislation calculated to ensure social justice to both employers and employees and advance progress of industry by bringing harmony and cordial relationship between the parties. The Act empowers adjudicating authorities to abrogate conditions in contract of employment, in the interest of social justice. Social and

economic justice is ultimate ideal of industrial adjudication. Social and economic justice has been given place of pride in our Constitution and doctrine of absolute freedom of contract has thus to yield to the higher claims for social justice. See Raibahadur Deewan Badri Das [1962 (II) LLJ 366].

44. Social justice is not based on contractual relations and is not to be enforced on principles of contract of service. It is something outside these principles and invoked to do justice without a contract to back out. Reference can be made to precedent in Rashtriya Mill Mazdoor Sangh [1960 (II) LLJ 263]. In J.K. Cotton Spinning & Weaving Mills Company Ltd. [1963 (II) LLJ 435] the Apex Court ruled that industrial disputes are to be adjudicated laced with the concept of social justice. It would be expedient to reproduce the observations made by the Apex Court which are extracted thus:

> "In our opinion the argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this court in dealing with industrial matters have emphasised the relevance, validity and significance of doctrine of social justice..... Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claim of social justice in dealing with industrial disputes. The concept of social justice is not narrow or one sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic idea of socio economic equality and its aim is to assist the removal of socio economic disparities and inequalities".

47. In Ahmedabad Manufacturing and Calico Printing Company Ltd. [1972 (II) LLJ 165] the above principles were reiterated by the Apex Court. Therefore, the law laid down by Apex Court makes it clear that the industrial adjudication cannot and should not ignore the claims of social justice. Same views were expressed in Basti Sagar Mills Company Ltd. [1978 (II) LLJ 412]. Therefore this Tribunal has to consider the case on the touch stone of social justice also.

48. When contents of clause 8.2.4 of Ex. WW1/4 are taken into account, it emerges that a right has been accorded to the Airlines to dispense with the service of employees by giving salary for one month in lieu of notice thereof. Whether this Tribunal should shake off its hands by interpreting provisions of the above clause and answer the dispute by applying it to the facts of the case? If it is done, then this Tribunal would be lacking in its powers of doing social justice to the parties. In settling the disputes between the employers and the workmen, the functions of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. The doctrine of absolute freedom of contract has thus to yield to the higher claims for social justice. The terms and conditions of a contract between the employer and the employee can, however, be interfered with by a Tribunal only when it is found necessary in the interest of social justice or exigencies of a situation.

49. Clause 8.3.4. of the service rules, or its plain reading enables the Airlines to resort to the policy of 'hire and fire' since it gives unguided powers to it to terminate employment of even a permanent employee under the stipulation contained therein. The clause empowers the Airlines to terminate the employment of any employee irrespective of the circumstances in which it was entered into or the nature or extent of work for which he was employed. It is apparent that the contract in the form of clause 8.2.4 of Ex. WW1/4 was stipulated as a devise to escape applicability of the definition of retrenchment. Industrial adjudication does not recognise the employer's right to employ labour on terms contrary to the provisions of the Act. Therefore, the concept of social justice would require of this Tribunal to limit the operation of clause 8.2.4 of Ex. WW1/4 to the cases only where managerial discretion of the employer to regularise the services of an employee is yet to be exercised. In a case where such discretion has been exercised and the employee renders continuous service of one year or more as contemplated by the provisions of section 25-B of the Act, by use of the provisions of clause 8.2.4 of Ex. WW1/4 the Airlines cannot be allowed to breach the provisions of section 25F or 25N of the Act, as the case may be, besides provisions of section 25G and 25H of the Act.

50. Services of the claimant were dispensed with on 17.05.1995. At that time they had rendered service of more than 20 years each to the Airlines. Admittedly they had unblemished service, which was appreciated by the Airlines by giving them upgradation from time to time. Their unblemished service was dispensed with in an unceremonious manner. As pointed out above, provisions of clause 8.2.4 are limited to the cases where managerial discretion of the Airlines is to be exercised to regularise services of the employees, therefore, these provisions were not to be exercised by the Airlines against the claimant, without following provisions of section 25-F or 25 N of the Act, as the case may be. Since action of the Airlines is wrong, it is to be brushed aside. From 1995 till date much water has flown, hence I do not find any justification to order reinstatement in service. Considering the factors that the claimants ought to have received retrenchment compensation amounting to Rs. 2.50 lakh each in 1995, they would have earned interest in case they would have invested the same in the bank, decrease in purchasing power

of money and the fact that they had to contest the litigation for such a long period, I am of the view that a sum of Rs.10 lakh each would be adequate amount of compensation to the claimants, in lieu of their claim of reinstatement in service. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 31-12-2012 Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 27 मई, 2013

का.आ. 1169.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सिंगापुर एयरलाइन्स लि के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद के केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 1, नई दिल्ली के पंचाट (संदर्भ संख्या 296/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-04-2013 को प्राप्त हुआ था।

[सं. एल-11012/13/2011-आई आर (सीएम-I)]

एम के सिंह, अनुभाग अधिकारी

New Delhi, the 27th May, 2013

S.O. 1169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 269/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Dehi as shown in the Annexure, in the industrial dispute between the management of M/s. Singapore Airlines Ltd. and their workmen, received by the Central Government on 02-04-2013.

[No. L-11012/13/2011-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE DR. R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D.No.296/2011

The President,

Singapore Airlines Employees Association Delhi,

31/15, Punjabi Bagh Extn., New Delhi - 110026.

...Workman

Versus

The Station Manager,

M/s Singapore Airlines Ltd.,

New Visitors Lounge,

Departure Level, IGI Airport,

Terminal-II, New Delhi-110037

....Management

AWARD

A Customer Service Agent(J) was appointed by Singapore Airlines Limited, New Delhi (in short the Airlines), *vide* appointment letter dated 07.10.2008. The employee joined his duties on 01.11.2008 at New Delhi. As per terms contained in letter of appointment, he was to remain on probation for a period of nine months, subject to extension by the Airlines at its sole discretion. His period of probation was extended upto 31/12/1999, *vide* letter dated 09.11.1999. On 24.12.2009 he was advised that his services stands terminated with effect from 31.12.2009. It led the employee to raise an industrial dispute before the Conciliation Officer. Since conciliation, proceedings ended into a failure, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No.L-11012/13/2011-IR(CM-1) New Delhi, dated 29.08.2011, with following terms:

> "Whether the action of the management of M/s. Singapore Airlines, New Delhi in terminating the services of Shri Sanjay Chouhan S/o Sh.R.P.Chouhan, Ex-Customer Service Agent(J) with effect from 31.12.2009 is justified? To what relief the workman concerned is entitled to?"

2. Claim statement filed by the Customer Service Agent(J), namely, Shri Sanjay Chouhan pleading that he was appointed by the Airlines *vide* letter dated 07.10.2008. He joined at New Delhi on 01.11.2008. As per terms contained in the appointment letter, he was to be confirmed after putting in 9 months service. He performed his duties most effectively, honestly and sincerely. His flawless, unblemished and remarkable service earned him appreciation many a times. On 09.11.2009, he was abruptly served a notice intimating him that his probation has been extended upto 31.12.2009, citing 'unsatisfactory work performance'. Thereafter, he was served a left dated 24.12.2009 terminating his service with effect for 31.12.2009. He further pleads that termination of his service was patently illegal since extension of period of probation was contrary to the provisions of 'Memorandum of Settlement' signed on 29.05.2008, which was given retrospective effect from 01.04.2006. Clause 5.1 of the above settlement limits period of probation of an employee up to a maxima of nine months which provisions are extracted thus:

> "5.1 The period of probation will be six months subject to extension by the Company at its sole discretion for a period of three months. The total period of probation shall not exceed nine months."

3. Since his services were not dispensed with at the end of nine months service, he claims reinstatement in service with continuity, full back wages and all consequential benefits.

4. Claim was demurred by the Airlines pleading that the reference was made by the appropriate Government without applying its mind, hence it is bad in law. It has not acquired status of an industrial dispute, as defined under section 2(k) of the Industrial Disputes Act, 1947 (in short the Act). It was also pleaded that the claimant is not a workman, as defined in section 2 (s) of the Act.

5. The Airlines presents that the claimant was appointed in its service on the strength of letter dated 07.10.2008. Initially his period of probation was fixed for 9 months. However it was clarified in the appointment letter that the Airlines reserves its right to extend probation period for any further term. The claimant joined the Airlines on 01.11.2008. Since his work was totally unsatisfactory, period of probation was extended upto 31.12.2009.

6. During period of probation, the claimant was given full support and cooperation, so as to enable him to improve his performance. However, the claimant failed to prove himself despite counseling, training and support. Hence, the Airlines was constrained to terminate his services. His termination was in consonance with the offer of employment letter dated 07.10.2008. There was no illegality in termination of his service. He is not entitled to any relief. His claim is liable to be dismissed, pleads the Airlines.

7. On pleadings of the parties, following issues were settled:—

(i) Whether action of the management in terminating the services of the claimant amounts to retrenchment?

(ii) As in terms of reference.

(iii) Relief.

8. Claimant has examined himself in support of his claim. Shri Bibhash Ghosh entered the witness box to testify facts on behalf of the Airlines. No other witness was examined by either of the parties.

9. Arguments were heard at the bar. Shri Mahesh Ranjan, authorised representative, advanced arguments on behalf of the claimant. Shri Jitender Kumar, authorized representative, made his submissions on behalf of the Airlines. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

Issue No.1

10. In his affidavit Ex.WW1/A, tendered as evidence, claimant details that he was appointed by the Airlines as Customer Service Agent with effect from 01.11.2008, *vide* appointment letter Ex.WW1/1. His last drawn salary was Rs.22,519.00 per month. He performed his duties honestly and sincerely and as such earned appreciation on many occasions. Those appreciations are Ex.WW1/2 to Ex.WW1/16. Abruptly, on 09.11.2009, he was served notice on the strength of which his probation was extended till 31.12.2009. His services were illegally terminated on 31.12.2009. Letter extending his probation is Ex.WW1/17. His services were terminated *vide* letter Ex.WW1/18. He harps on proposition that termination of his service was patently illegal since extension of period of probation was in contravention of "Memorandum of Settlement", which is Ex.WW1/19.

11. Shri Bhibash Ghosh declares in his affidavit Ex.MW1/A, tendered as evidence, that the claimant was appointed as Customer Service Agent on probation for a period of nine months, which terms of service are contained in his appointment letter dated 07.10.2008. Work of the claimant was totally unsatisfactory, hence his period of probation was further extended till 31.12.2009 *vide* letter dated 09.11.2009. Claimant failed to improve his performance even during extended period of probation. His services were terminated at the end of probation period on 31.12.2009, in terms of employment offer given to him.

12. When facts unfolded by the claimant and Shri Ghosh are scanned, it came to light that the claimant was appointed as Customer Service Agent by the Airlines, *vide* appointment letter Ex.WW1/1. He was put on probation for a period of nine months, subject to extension by the Airlines at its sole discretion. During period of probation, his services could be dispensed with in first three months of employment without service of any notice and thereafter on service of notice for a period of 14 days or pay in lieu thereof. After his confirmation, his services could be dispensed with on service of one months notice in writing or pay in lieu thereof. Services of the claimant was found not to be satisfactory as emerged out of appraisal report, proved as Ex.WW1/M2. His period of probation was extended till 31.12.2009, *vide* letter Ex.WW1/17. His services were dispensed with on 31.12.2009, *vide* letter Ex.WW1/18.

13. "Memorandum of Settlement" proved as Ex.WW1/19 was entered into between the Airlines and Singapore Airlines Employees Association on 29.05.2000. This memorandum of settlement came into effect on 01.04.2006 and remained in force till 31.03.2010. Clause 5.1 of the "Memorandum of Settlement" projects that period of probation will be six months subject to extension by the Airlines at its sole discretion for a further period for 3 months. Total period of probation shall not exceed 9 months. Therefore, out of "Memorandum of Settlement" Ex.WW1/19, it came over the record that the Airlines may put an employee on probation for a period of six months subject to its extension for a further period of three months. Total period of probation shall not exceed nine months. As emerge out of appointment letter Ex.WW1/1, claimant was to remain on probation of nine months, which was subject to extension at the sole discretion of the Airlines. His period of probation was extended for till 31.12.2009. The claimant agitates that after expiry of period of nine months, he was deemed to have been confirmed in service of the Airlines. Contra to his submissions, the Airlines projects that since

he accepted terms of service contained in Ex.WW1/1, he is estopped from contending to the contrary. His services were regulated by stipulations contained in his appointment letter and he could not claim benefit of Ex.WW1/19. The Airlines asserts that Ex.WW1/19 makes no provision for automatic confirmation in service. Since the claimant never raised eyebrows when his period of probation was extended on the strength of Ex.MW1/17, it does not lie in his mouth to assert that he was deemed to have been confirmed on expiry of initial period of nine months in service.

14. To appreciate rival submissions, it is expedient to have a glance on law on the topic. A probationer does not automatically attain permanent status on expiry of his probation. If he is neither discharged nor confirmed, he continues to serve as a probationer until otherwise dealt with. Therefore, in the absence of anything contained in the contract to the contrary nothing would prevent the employer from extending period of probation for a further reasonable period. The purpose of placing a person on probation is to try him during period of probation to assess his suitability for the job. If an employee who is on probation is removed from his service during his period of probation by order of termination simplesiter, it cannot be said that the order was stigmatic. The principle of law relating to discharge under contract and discharge simplesiter were extended to the discharge of probationer by the Supreme Court in Express Newspaper Ltd. [1964 (I) LLJ 9]. The facts of the case were that a journalist was appointed on probation for a period of 6 months and was to be confirmed on being found suitable for the job. Before expiry of period of probation the employer terminated his services on the ground that his work was not satisfactory. The journalist challenged his discharge on the ground that it was *mala fide* and unfair labour practice on the part of the employer. The employer pleaded that the journalist was appointed on probation, hence termination of his service on account of unsatisfactory work was well within rights. The Apex Court recognized the right of the employer to terminate service of a probationer at the end of the period of probation. The observations made by the Apex Courts are extracted thus:

> "there can, in our opinion be no doubt about the position in law that an employee appointed on probation for 6 months continues as probationer even after the period of 6 months if at the end of the period his services had either not been terminated or he is confirmed. It appears clear to us that without anything more an appointment on probation for 6 months give the employer no right to terminate the service of an employee before 6 months had expired except on the ground of misconduct or other sufficient reasons in which case even the service of a permanent employee could be terminated. At the end of the 6 months period the employer can either confirm him or terminate his services because his performance is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination the employee continues to be in service as a probationer".

15. The distinction was maintained by the Apex Court between cases of termination of employment of a probationer before period of probation had expired and the cases where the employer exercised his inherent right either to confirm or to terminate the employment of the probationer at the end of the period of probation. When an employee appointed on probation for a specific period is allowed to continue in the post after expiry of that period without any specific order of confirmation, he continues in his post as a probationer only and acquires no substantive right to the post in the absence of any stipulation to the contrary in the original order of appointment or service rules. When an employee is allowed to continue after end of period of probation, necessary implication would follow that his period of probation has been extended and it cannot be concluded that he should be deemed to have been confirmed. Law to this effect was laid by the Apex Court in Dharam Singh (AIR 1968 SC 1210). Consequently it is clear that an express order of confirmation is necessary to give an employee substantive right to the post and from the mere fact that he is allowed to continue in the post after the end of period of probation, it is not possible to hold that he should be deemed to have been confirmed. In Unit Trust of India [1993 (I) LLJ 240] the Apex Court announced that the vary purpose of putting a person on probation is to watch his performance.

16. Law on deemed confirmation of a probationer was noticed by the Apex Court in Karnataka State Road Transport Corporation (AIR 2000 SC 2070), wherein following observations were made:

> "10. This Court had an occasion to review, analyse critically and clarify the principles on an exhaustive consideration of the entire case law in two recent decisions reported in Dayaram Dayals case (supra) and Wasim Begs case (supra). One line of cases has held that if in the Rule or Order of appointment, a period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond the prescribed period of probation, he cannot be deemed to be confirmed and there is no bar on the power of termination of the officer after the expiry of the initial or extended period of probation. This is because, at the end of probation he becomes merely qualified or eligible for substantive permanent appointment. The other line of cases are those where even though there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The Constitution Bench which dealt with the case reported in State of Punjab *vs* Dharam Singh

[1968 (3) SCR1], while distinguishing the other line of cases held that the presumption about continuation, beyond the period of probation, as a probationer stood negatived by the fixation of a maximum time limit for the extension of probation. Consequently, in such cases the termination after expiry of the maximum period upto which probation could be extended was held to be invalid, inasmuch as the officer concerned must be deemed to have been confirmed.

11. The principles laid down in Dharam Singhs case (supra) though were accepted in another Constitutional Bench of a larger composition in the case reported in Samsher Singh, etc. *vs* State of Punjab & Anr. [1974 (II) LLJ 465], the special provisions contained in the relevant rules taken up for consideration therein were held to indicate an intention not to treat the officer as deemed to have been confirmed, in the light of the specific stipulation that the period of probation shall be deemed to be extended if the officer concerned was not confirmed on the expiry of his period of probation. Despite the indication of a maximum period of probation, the implied extension was held to render the maximum period of probation a directory one and not mandatory. Hence, it was held that a probationer in such class of cases is not to be considered confirmed, till an order of confirmation is actually made. The further question for consideration in such category of Cases where the maximum period of probation has been fixed would be, as to whether there are anything else in the rules which had the effect of whittling down the right to deemed confirmation on account of the prescription of a maximum period of probation beyond which there is an embargo upon further extension being made, and such stipulation was found wanting in Dayaram Dayal case (supra).

12. The decision in Wasim Begs case (supra) also purported to classify these type of cases into three categories, on a review of the entire gamut of law. It was observed therein as follows:

"15. Whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the end of the maximum probationary period unless there is anything to the contrary in the Rules."

17. Same view was taken by the Apex Court in High Court of Madhya Pradesh through Registrar and others *vs*. Satyanarain Jhevar [2001 (7) SCC 161]. For sake of convenience, law laid therein is reproduced thus:

"11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the such case there is no bar against termination at any point of time after expriy of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expriy of the maximum period of probation in case before its expriy the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purpose of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired."

18. In Commissioner of Police *vs.* R.S. More, [2003 (2) SCC 408] law laid in the above case was followed. High Court of Delhi in Archana Dayal [120(2005) DLT 100] and Dr. Ajit Singh Nayyar [125(205) DLT 650] followed ratio of law laid down by the Apex Court in precedents referred above. Therefore, it becomes crystal clear that where under rules maximum period of probation is prescribed but specific act on the part of the employer by way of issuance of confirmation order is needed, in that situation expiry of maximum period of probation would not result into automatic confirmation of employee. He would be not deemed to have been confirmed merely because period of probation stood expired.

19. Facts of the controversy are to be gauged through legal dictum detailed above. As emerged out of appointment letter Ex.WW1/1 and Memorandum of Settlement Ex.WW1/19, period of probation is prescribed. Appointment letter details that the claimant shall serve on probation for a period of nine months subject to extension by the Airlines at its sole discretion, while Memorandum of Settlement projects that period of probation will be six months subject to extension by the Airlines at its sole discretion for a period of three months and total period of probation shall not exceed nine months. In appointment letter, no terms are stipulated which constrains the Airlines not to extend period of probation beyond the stipulated time. "Memorandum of Settlement" limits period of probation to nine months only.

In Memorandum of Settlement proved as Ex.WW1/19, it has not been stipulated that on expiry of period of nine months, employee would automatically be deemed to have been confirmed in service. Therefore, it is crystal clear that Memorandum of Settlement Ex.WW1/19 stipulates that period of probation shall not exceed a period of nine months, but deemed confirmation has been ruled out therein.

20. When an employee is deemed to have been confirmed in service, the only meaning possible is that he is not in reality confirmed in service but the "terms of service" requires him to be treated as if he was confirmed. The expressio "deemed" is used a great deal in many modern statutes and for many purposes. It is at times used to give a special glossary or paraphrase to an expressio or an artifical construction to a word or a phrase. It is at times used to interoduce artificial conceptions which are intended to go beyond settled legal principles. It is at times used to remove uncertainly or leave no scope of doubt and debates which may involve refined and ingenious points. At times it is used to give extended and restricted operation to a rule which cannot be given to it be read as enacted. *See* Mst.Khatizabai Mohd. Ibrahim (A.I.R. 1960 Bom.61). Also *see* Pandurang Vinayak (A.I.R. 1953 S.C. 244).

21. To conclude that the claimant is deemed to have been confirmed in service "Memorandum of Settlement" Ex.WW1/19 ought to have been provided that on expiry of probation period of nine months an employee would be deemed to have been confirmed in service. In case it could not be specifically so declared therein, it would have conferred certain privilege of a permanent employee on expiry of probation period of nine months. Unfortunatily nothing of such sort has been provided in Ex.WW1/19. Ex.WW1/9 maintains a clear distinction between a parmanent employee and a probationer. A specific act on the part of the employes was required to declare an employee confirmed in service. In a service industry like air transport service, efficiency of an employee cannot be compromised. Right of an employer to assess his suitability cannot be sacrificed at the altar of "maximum period of probation" when circumstances suggest that a specific action on the part of the employer was required to be done. Thus, it is dent that the employer retained right of option to issue confirmation order in favour of an employee and in a situation where no such option has been exercised, period of probation of an employee would be treated to have been extended. In the case under reference, period of probation was extended till 31.12.2009 and services of the claimant were dispensed with when an opinion was formed by the Airlines that he had failed to improve his work and conduct and was not worthy of retention in service.

22. Question for consideration would be as to whether act of the Airlines in terminating services of the claimant with effect from 31.12.2009 amounts to retrenchment? For an answer, definition of the word 'retrenchment' given under clause (oo) of section 2 of the Act needs consideration. For the sake of convenience, the said definition is extracted thus:

> "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

23. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

24. Sub Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. Thus "non-renewal of contract of employment" pre-supposes an existing contract of employment, which is not renewed. When services of an employee is terminated on account of

non-renewal of contract of employment, between the employer and the workman, it does not amount to retrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated, under this part too, would not amount to retrenchment. However this sub-clause, being in the nature of an exception to clause (oo) of section 2 of the Act, is ruled to be construed strictly when contractual agreement is used as *modus operandi* to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. *See* Shailendra Nath Shukla (1987 Lab. I.C. 1607), Dilip Hanumantrao Shrike (1990 Lab. I.C. 100) and Balbir Singh [1990 (1) LLJ. 443]. On review of law laid by the Apex Court and various High Courts, a single Judge of the Madhya Pradesh High Court, in Madhya Pradesh Bank Karamchari Sangh (1996 Lab. I.C. 1161) has laid following principles of interpretation and application of sub-clause (bb) of clause (oo) of section 2 of the Act:

"(i) that the provisions of section 2(oo)(bb) are to be construed benevolently in favour of the workman,

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under section 2(oo)(bb),

(iii) that the provisions of section 2 (oo)(bb) are not to be interpreted in the manner which may stifle the main provision,

(iv) that if the workman continues in service, the non-renewal of the contract can be deemed as *mala fide* and it may amount to be a fraud on statute;

(v) that there would be wrong presumption of non-applicability of section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

25. Termination of service of an employee during the period of probation was held to be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in C.M.Venugopal [1994 (1) LLJ 597]. As per facts of the case, Regulation 14 of the Life Insurance Corporation of India (Staff) Regulation, 1962 empowered the Corporation to terminate the service of an employee within the period of probation. The employee was put on probation for a period of one year, which was extended by another year. Since he could not achieve the target to earn confirmation, his service was terminated in terms of Regulation 14 as well as order of appointment. The Apex Court ruled that the case was covered by the exception contained in sub-clause (bb), hence it was not retrenchment.

26. As detailed above, services of the claimant were dispensed with on 31.12.2009, date when his period of probation came to an end. Evidently, services of the claimant were dispensed with at the end of the probation period and his case is covered within the exception contained in clause (bb) clause (oo) of section (2) of the Act. Termination of his services does not amount to retrenchment. The issue is, therefore, answered in favour of the Airlines and against the claimant.

Issue No.2

27. Claimant projects that he earned various commendations during tenure of his service. He harps on the proposition that when his services were appreciated by the customers, it does not lie in the mouth of the Airlines to claim that his services were not satisfactory. To project his point of view, he places reliance on letters Ex.WW1/2 to Ex.WW1/16. Contra to the above proposition, the Airlines asserts that performance of the claimant was not up to the mark, since he was found to be careless and losing company's assets. He used not to attend staff meetings regularly, was rude and arrogant towards GHS Staff and failed to show any remorse for contributing towards delay of flight SQ 407 on 08.10.2009. He failed to carry out manual check-in exercise in time and could not inform CLC zero fuel weight figures. During briefing session, he displayed lackadaisical attitude towards the whole issue. Thus, Airlines projects that it does not lie in the mouth of the claimant to praise his work and award certificate of competence to himself.

28. Whether assessment made by the employer about suitability of an employee can be weighed by an Industrial Adjudicator ? It is a settled proposition that assessment to the effect that service of a probationer is satisfactory or not rests with the satisfaction of the employer. Such satisfaction could be objectively assessed and employer is not bound to give any reason when he does not confirm a probationer on expiry of the period of probation. However the industrial adjudication may call upon the employer to put reasons for not confirming an employee when he finds the order laced with *mala fide*. In Upkar Machinery Ltd., [1996 (1) LLJ 398] the Apex Court ruled that when validity of termination of services, during period of probation without notice and without assigning any reason, is under challenge in that situation Industrial Adjudicator would be competent to find out whether the order of termination was *bona fide* exercise of power conferred by the contract. In Brook Bond India (Pvt.) Ltd., [1993 (II) LLJ 454] workman was appointed in the first instance for a period of six months, extendable for a further period of three months or more in absolute discretion of the employer. The terms of appointment further provided that the employer had a right to terminate the services of a probationer, "during the period of probation or extended period of probation or before confirmation in writing, without notice and without assigning reasons whatsoever." Service was terminated

within the period of probation. During the course of adjudication the employer adduced no evidence to show that the work of probationer was unsatisfactory. The Apex Court ruled that the order of terminating the service of a probationer was capricious and unreasonable. The termination was held to be not justified. The above precedents make it is clear that an Industrial Adjudicator has a right to see whether the order of termination is *mala fide* or it amounts to victimization or unfair labor practice.

29. Efforts would be made to ascertain whether the claimant has been able to show that termination of his services was *mala fide* act or it amounted to unfair labour practice on the part of the Airlines. To appreciate facts and documents relied by the claimant, it is to be noted that Ex.WW1/2, Ex.WW1/11 to Ex.WW1/16 relate prior to November, 2008. These documents have no bearing on work and performance of the claimant during the period of his probation. Consequently, it is evident that documents are irrelevant. The same are discarded from consideration.

30. Ex.WW1/3 to Ex.WW1/6 and Ex.WW1/10 are e-mails purported to have been sent by Shri Karandeep, Geoffery D Askew, Dr. Nidhu Jasm, Shri Rahul Mathur, Himanshu Chaturvedi, Geralyn Lee and Tim Peng. All these documents relate to April and May, 2009. Thus, it is emerging over the record that for the months of April and May, 2009, services rendered by the claimant were appreciated by a few customers of the Airlines. As per case projected, performance of the claimant was assessed by the Airlines and several verbal warnings were given to him for non-punctuality. On 26.12.2008, an e-mail was sent to him for his non-punctuality. He developed a habit of reporting late for work projects the Airlines. On 23.01.2009 Assistant Station Master had counseled him when he was found not working with the team and used to keep himself isolated from his colleagues. He had shown poor attitude towards his work and failed to comprehend flight handling operations. He was found to be derogatory while dealing with his peers and specially towards third party staff. He was found to be tactless and arrogant towards staff of the contractor. On 09.06.2009, he was counseled by the Assistant Station Master when he lose mobile phone provided to him by the Airlines. On 08.10.2009, he contributed towards delay of flight SQ 407. These facts were brought to his notice on 09.11.2009. Thus, it emerges over the record that the claimant showed poor performance and found below standards relating to quality and quantity of work, ability to learn new techniques, dependability, his interest and satisfaction towards the job, co-operation with his colleagues and superiors and lacked tact and ability to express effectively. Consequently, it is evident that the claimant's performance was poor, below expectation and lacking meticulousness. He displayed low credibility amongst colleagues and superiors relating to quality of his work. Consequently, the Airlines noted that the claimant lacked normal work culture and was found to be a below average employee. These circumstances led the Airlines to dispense with his services. When facts are gauged through standards of work culture, which the claimant was supposed to maintain, it emerged over the record that he lacked efficiency and quality of work. No reasons emerged over the record, which may persuade this Tribunal to find fact in favour of the claimant to conclude that the act of termination of his services by the Airlines amounted to *mala fide*, victimization or unfair labour practice. Above reasons led me to announce that the act of terminating his services by the Airlines with effect from 31.12.2009 is found to be legal and justified. The issue is, therefore, answered in favour of the Airlines and against the claimant.

Relief

31. Since the act of dispensing with the services of the claimant by the Airlines does not amount to retrenchment, nor act of *mala fide*, victimization or unfair labour practice, claimant is not entitled to any relief. His claim statement is liable to be brushed aside. Accordingly, his claim is discarded. An award is passed in favour of the Airlines and against the claimant. It be sent to the appropriate Government for publication.

Dated : 26-2-2013

Dr. R .K. YADAV, Presiding Officer

नई दिल्ली, 27 मई 2013

का.आ. 1170 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी सी सी एल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 62/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 05-04-2013 को प्राप्त हुआ था।

[सं. एल-20012/72/2009-आई आर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th May, 2013

S.O. 1170.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. B.C.C.L. and their workmen, received by the Central Government on 5-4-2013.

[No. L-20012/72/2009-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 1), DHANBAD.

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D.ACT, 1947.

Ref. No. 62 of 2009

Employers in relation to the management of Jogidih Colliery of M/s. B. C.C.L.

AND

Their workmen.

Present:—Sri Ranjan Kumar Saran,

Presiding officer

Appearances:

For the Employers. : Sri U.N. Lall, Advocate

For the Workmen. : Sri S.Paul, Advocate

State : Jharkhand. Industry : Coal.

Dated. 15-03-2013

AWARD

By Order No. L-20012/72/2009 -IR -(C-I), dt. 09/11/2009, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Jogidih colliery of M/S. BCCL in Superannuating Sri Kali Singh, Attendance Clerk *w.e.f.* 30.06.2006 when there is discrepancy in his date of various records is legal and justified? To what relief is the workman concerned entitled?"

2. The case is received from the Ministry of Labour on 27.11.2009. After notice both parties appeared, the Sponsoring Union/workman files their written statement on 05.01.2010. In this case, it is alleged that the workman has been superannuating before attaining his age of retirement on the basis of wrong assessment of the age of the workman, which has been strongly objected by the workman for which the present reference has been referred.

3. In this case, workman has been examined. He has exhibited five document, on the other hand. From the side of the management two witnesses have been examined and six documents are marked from Ext. M-1, medical report of the management, it is seen the age of concerned workman is forty years as on 27.6.1986. But below that, the date of Birth of the workman is written 46 years of age and that has been scored through, which creates suspicion.

4. In Ext. M-2, the age of the workman has been written, the Date of Birth of the workman 27.06.1986 and below that, it is written 14.02.1954 as per the workman's identity card. In the form "B" register the Date of Birth of the workman has been written 40 years as on 27.06.1986. In the said document identity card Number of the workman has been noted from the photocopy of Identity Card of the workman the age of the workman has been written as 14.02.1954 and the said I.D Card issued in the year 1974 *i.e.* much prior to form "B" register.

5. Moreover the I.D Card No. 211102 has been mentioned in form "B" register Ext. M-6 which postulates that the Form "B" register came into existence after the issuance of I.D Card.

6. Moreover the witnesses examined by the management though said that the age determined by the workman by the medical board has not stated that which mode the medical team applied for determination of age. When that is not clear, this Tribunal accepts the Date of Birth on the oldest document *i.e.* I.D Card.

7. Moreover other documents filed by the management has been observed not beyond suspicion as per the findings given supra. Therefore superannuating the workman before is illegal. The date of Birth of the workman is accepted to 14.02.1954.

8. Considering the facts and circumstance, I hold that the action of the management of Jogidih colliery of M/S. BCCL in superannuating Sri Kali Singh, Attendance Clerk *w.e.f.* 30.06.2006 is not legal and justified, Hence the workman be reinstated with continuation of service within 10 days after the award is notified in the gazette.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 28 मई, 2013

का.आ. 1171.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मैसर्स इंडियन ऑयल कॉरपोरेशन दिल्ली** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, दिल्ली** के पंचाट **(संदर्भ संख्या 84/2013)** प्रकाशित करती है जो केन्द्रीय सरकार को 27-5-2013 को प्राप्त हुआ था।

[सं. एल-15025/01/2013-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 28th May, 2013

S.O. 1171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2013) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute

between the employers in relation to the management of Indian Oil Corporation, Delhi and their workman, which was received by the Central Government on 27/05/2013.

[No. L-15025/01/2013-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.1, KARKARDOOMA COURTS COMPLEX, DELHI.

I.D. No. 84/2013

IOC Mazdoor Sangh, ...Workmen

House No.347, Mangolpur KaIan

Delhi

Versus

Indian Oil Corporation Ltd. ...Management

Through its Chairman,

Care 2, Scope Complex,

Lodhi Road,

New Delhi

AWARD

1. Workmen, namely, Shri Kamal Kanwar, Shri Dinesh Kumar, Shri Vijay Prakash, Shri Umed Singh, Shri Kishan Kumar, Shri Moti Pal, Shri N. Prakash, Shri Jagdish, Shri Prakash Chand, Shri Gopal, Shri Madan Lal, Shri Pradeep Kumar, Shri Raju Sharma, Shri Azad Singh, Shri Ramesh Kumar, Shri Naresh Kumar and Shri Kuldeep Singh joined Indian Oil Corporation Ltd. (in short the Corporation) through M/s. Twiga Fag Bells, B.N. Contractor and M/s. R.L. Engineering at their Bottling Plant, Tikri Kalan, New Delhi. The management stopped making payment of wages these workmen during the years 1999-2004 and 2008. A writ petition was filed before the Hon'tble High Court of Delhi by the workmen bearing number W.P.(C) No.770/98, in which petition directions were issued by the High Court not to replace the workmen with other contract workers, during the pendancy of the petition. Services of Shri Pradeep Kumar and Raju Sharma were dispensed with in January, 1999, services of Sh.Kamal Kanwar, Shri Dinesh Kumar, Shri Vijay Prakash, Shri Umed Singh were terminated on 07.03.2004, while services of Shri Azad Singh, Shri Ramesh Kumar, Shri Naresh Kumar and Shri Kuldeep Singh were dispensed with in April 2004 and Shri Kishan Kumar, Shri Moti Pal, Shri N. Prakash, Shri Jagdish, Shri Prakash Chand, Shri Gopal were bade farewell on 03.08.2008. A notice of demand was served on the Corporation on 29.10.2011. On 13.05.2013, an industrial dispute was raised by the claimants before this Tribunal, using right available to them under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government, under sub-section (1) of section 10 of the Act.

2. Arguments on maintainability of the dispute were heard at the bar. Shri Sunil Kumar, authorized representative, advanced arguments on behalf of the claimants. None was there to advance arguments on behalf of the management. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

3. As record projects, dispute under reference was raised by the claimants, namely, Shri Kamal Kanwar, Shri Dinesh Kumar, Shri Vijay Prakash, Shri Umed Singh, Shri Kishan Kumar, Shri Moti Pal, Shri N. Prakash, Shri Jagdish, Shri Prakash Chand, Shri Gopal, Shri Madan Lal, Shri Pradeep Kumar, Shri Raju Sharma, Shri Azad Singh, Shri Ramesh Kumar, Shri Naresh Kumar and Shri Kuldeep Singh under sub section (2) of section 2A of the Act. Provisions of section 2A of the Act contemplates that any dispute or difference between the workman and his employer connected with or arising out of discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute, not withstanding that no other workman nor any union of workmen is party to the dispute. Language, used in section 2A of the Act, very clearly states that in order to make a dispute an industrial dispute, it must be sponsored by a union or a considerable number of workmen in the establishment of the management. However, any dispute between a workman and his employer, which is connected with or arising out of his discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute. Language, used in section 2A of the Act, very clearly states that in order to make a dispute an industrial dispute, it must be sponsored by a union or a considerable number of workmen in the establishment of the management. However, any dispute between a workman and his employer, which is connected with or arising out of his discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute.

4. The term "industrial dispute" has been defined by sub-section (k) of section 2 of the Act to mean "any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person". The definition of "Industrial dispute" referred above, can be divided into four parts, *viz.* (i) factum of dispute, (2) parties to the dispute,

viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with —(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

5. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", "the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case, the claimants project that they are workman within the meaning of clause(s) of Section 2 of the Act.

6. A long line of decisions, handed down by the Apex Court, had established that an individual dispute could not per se be an industrial dispute, but could become one if it was taken up by a trade union or a considerable number of workmen of the establishment. This position of law created hardship for individual workmen, who were discharged, dismissed, retrenched or whose services were otherwise terminated when they could not find support by a union or any appreciable number of workman to espouse their cause. Section 2A was engrafted in the Act by the Amendment Act of 1965 and it has to be read as an extension of the definition of industrial dispute contained in clause (k) of section 2 of the Act. Thus by way of extension of definition of industrial dispute, by insertion of section 2A of the Act, the dispute of an individual workman connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his service by his employer has been brought within the ambit of the Act.

7. Industrial workman has got a very restricted right to move an industrial court when his service conditions have been changed to his prejudice during pendancy of an industrial dispute or he has been dismissed or discharged during such pendancy, under section 33-A of the Act. He has a right to recover certain dues from his employer under section 33(C)(2) of the Act. An individual workman who had been thrown out of employment had to rely for redress only through aegis of the union or his co-workers where there was no union. Sometimes he found it hard to proceed further or get the union to take up his cause. Besides, there are industries where so far no union have been formed. Workers are still, in certain industries, unorganized. Enactment of section 2A of the Act was taken up by the Parliament solely with a view to modify the law to raise industrial disputes relating to discharge, dismissal, retrenchment or otherwise termination of services of the workmen.

8. Classification between workmen unaided by union or considerable number workmen and workman whose cause is espoused by a union or considerable number of workmen has been made by the legislature, when provisions of section 2A were brought on the Statute Book. Thus, it is evident that by way of extension of definition of industrial dispute relating to discharge, dismissal, retrenchment or termination of service of the workmen, Legislature provided remedy to the workmen who is unaided by a union or Considerable number of workmen. Section 2A of the Act does not destroy the concept of industrial dispute and collective dispute and such concept still remains as a major class and in all other provisions of the Act. Consequently, it is evident that excepting the dispute relating to dispute of dismissal, discharge, retrenchment or otherwise termination of services of a workman, a dispute is to be espoused by the union or considerable number of workmen to reach the status of an industrial dispute.

9. Even in cases of dispute between a workman and his employer connected with or arising out of his discharge, dismissal, retrenchment or termination of his service, it has to pass through the procedure provided in the Act. For raising a dispute, an employee has to raise a demand on the employer and thereafter he has to raise the dispute before the Conciliation Officer, who had to enter in to the conciliation proceedings. In case conciliation proceedings fails, the Conciliation Officer submits his report to the appropriate Government. On consideration of the report, so submitted by the Conciliation Officer, the appropriate Government has to form an opinion that an industrial disputes exists or is apprehended and refer that dispute to an industrial adjudicator under sub-clause (c) or (d), as the case may be, of sub-section (1) of section 10 of the Act. Procedure, referred above, would take considerable time and an employee had to wait for the decision of the appropriate Government, making reference to an industrial adjudicator for adjudication of the dispute. With a view to do away with this hardship, Legislature, *vide* Amendment Act No.24 of 2010, inserted sub section (2) and (3) in section 2A and re-numbered original section as sub section (1) in order to enable the workman to approach an industrial adjudicator for adjudication of his dispute, without it being referred by the appropriate Government. For sake of convenience, provisions of sub-section (2) and (3) of section 2A of the Act are reproduced thus:

> "(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section

(1) may make an application direct to Labour Court or industrial Tribunal for adjudication of the dispute referred to therein after expiry of forty five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and in receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (*1*)."

10. Bare perusal of sub section (3) of section 2A of the Act makes it clear that an application for adjudication of an industrial dispute, relating to discharge, dismissal, retrenchment or termination of his service can be moved by an employee before expiry of three years from the date of his discharge, dismissal, retrenchment or otherwise termination of service, as the case may be.

11. Provisions of sub section (2) of section 2A of the Act empowers a workman to move an application before an industrial adjudicator for adjudication of his dispute, after expiry of 45 days from the date he made such application before the Conciliation Officer. On receipt of such application, the industrial adjudicator shall have powers and jurisdiction to adjudicate the dispute as if it were a dispute referred to it by the appropriate Government, in accordance with provisions of the Act. Thus, it is evident that before moving an application before an Industrial Adjudicator, the workman has to approach the Conciliation Officer for conciliation of his dispute. In case no settlement is arrived at or conciliation proceedings goes beyond a period of 45 days from the date the workman had moved the application to the Conciliation officer, he may approach the Industrial Adjudicator for adjudication of his dispute, without being referred by the appropriate Government under the provisions of the Act. Consequently, it is evident that before approaching an Industrial Adjudicator, workman whose services have been discharged, dismissed, retrenched or terminated by his employer, shall have to approach the Conciliation Officer and wait for expiry of a period of 45 days, in case no settlement arrived between them. Obligation to approach the Conciliation Officer and allow him to enter into conciliation proceedings are mandatory. It is also obligatory on the workman to wait for a period of 45 days and only thereafter he can seek indulgence of an industrial adjudicator for adjudication of his dispute. In case he opts not to approach the Conciliation Officer or fails to wait for a period of 45 days from the date of moving his application, the Industrial Adjudicator will acquire no jurisdiction to entertain the dispute.

12. Out of facts presented by the claimants, it emerged over the record that their services were disengaged by the Corporation in January 1999/April 2004/07.03.2004 and 03.08.2008 respectively. Notice of demand was served on the Corporation on 29.10.2011, wherein facts relating to termination of their services on above dates have been detailed. Consequently, they project a case of termination of their services by the Corporation in January 1999/April 2004/07.03.2004 and 03.08.2008. For approaching this Tribunal, under provisions of sub-section (2) of section 2A of the Act, limitation of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service of an employee has been imposed by the legislature. Thus, it is apparent that the claiments could have approached this Tribunal under sub-section (2) of section 2A of the Act, till January 2002/April 2007/ 06.03.2007/02.08.2011 only. As is evident, claim is preferred on 13.5.2013, that is much beyond the period of limitation. Under these circumstances, this Tribunal cannot invoke its jurisdiction for adjudication of the dispute.

13. Since the dispute has been raised beyond the period of limitation, the Tribunal cannot invoke its jurisdiction to entertain it. Under these circumstances, the Tribunal is constrained •to brush aside the claim statement, presented by the claimants. Accordingly, their claim is dismissed, being barred by time. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 20-05-2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 28 मई, 2013

का.आ. 1172.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **मैसर्स नुमालीगढ़ रिफाईनरी लिमिटेड असम** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय गौहाटी के पंचाट **(संदर्भ संख्या 17/2013)** प्रकाशित करती है जो केन्द्रीय सरकार को 27-5-2013 को प्राप्त हुआ था।

[सं. एल-30011/61/2012-आई आर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 28th May, 2013

S.O. 1172.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/2013) of the Central Government Industrial Tribunal/Labour Court Guwahati

now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Numligarh Refinery Ltd. Assam and their workman, which was received by the Central Government on 27/05/2013.

[No. L-30011/61/2012-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM.

Present : Sri L.C.Dey, M.A.,LL.B.,

Presiding Officer,

CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 17 of 2013.

In the matter of an Industrial Dispute between:

The President/The General Secretary, Numaligarh Refinery Driver's Union, Numaligarh, Golghat, Assam.

Versus

The Management of Numaligarh Refinery Ltd., Numaligarh Complex, Golghat, Assam.

APPEARANCES

For the Workman. : Mr. Jiban Chandra Gogoi, President of the Union.

Mr. Ramlagan Kumar, General Secretary of the Union.

For the Management: Mr. Kajal Saikia, Chief Manager (HR), Numaligarh Refinery Ltd.

Date of Award: 22.03.13.

AWARD

1. This Reference is arising out of an Industrial Dispute raised by M/S Numaligarh Refinery Driver's Union, Numaligarh, Golghat in respect of revised rates of wages and other benefits.

2. On receipt of the order No.L-30011/61/2012-IR(M) dated 04.02.2013 from the Ministry of Labour & Employment, Government of India, New Delhi, this reference has been registered and notices were issued upon both the parties. The schedule of this Reference is as under:

SCHEDULE

"Whether the action of the management of Numaligarh Refinery Ltd., in discontinuing the revised rates of wages and other benefits under the Memorandum of Settlement dated 26.09.2011, is legal and justified? What relief the workmen are entitled to?"

2. Accordingly the General Manager (Operation) M/S Numaligarh Refinery Ltd. Numaligarh appeared through his authorized representative Mr. Bishajit Bora, Manager (IR/PR) and the President and General Secretary, MIS Numaligarh Refinery Driver's Union appeared personally. Both the parties submitted petition No.255 dated 22.3.2013 jointly stating that the dispute involved in this Reference Case has already been settled on 15.9.2012 in an informal discussion between the Management and the Union and the demand of the Union has already been fulfilled in the light of the Memorandum of Settlement dated 26.9.2011 and as such, prayed for disposal of the Reference.

3. The representative of the Union Mr. Ramlagan Kumar, the General Secretary of M/s Numaligarh Refinery Driver's Union and Mr. B.Bora, the representative of the Management i.e. Numaligarh Refinery Ltd. have been examined as W.W.I and M.W.1 respectively.

4. I have also heard both the sides.

On perusal of the statements of both the W.W. 1 and the Management Witness No.1, it appears that they have deposed supporting the statements made in their joint petition. The workman Witness No.1 in his statement said that on 6.8.2012 a dispute arose between the Driver's Union, Numaligarh Refinery Ltd. and the Management of the Numaligarh Refinery Ltd. and the matter was referred to the A.L.C. (C), Dibrugarh who hold a discussion in presence of both the parties for arriving at settlement but it failed and thereafter the matter was referred to the Ministry of Labour & Employment and accordingly this Reference case was initiated. But during pendency of this Reference both the parties discussed the matter informally on 15.9.2012 relating to the grievance of the Union and accordingly a settlement arrived at between the parties as per the terms and conditions of the said settlement. The grievance of the Union relating to the revised wages has been satisfied and they are reaping the benefit of the said settlement. As such, the Union is not interested to proceed with this Reference and they have also no objection if the Reference is disposed and the necessary order passed by this Tribunal as deem fit.

5. Mr. Bishajit Bora, the Management witness No.1 made his statement supporting the contention of workman witness No.l. categorically mentioned that he has been authorized by the General Manager (HR) to appear before

this Tribunal representing the Numaligarh Refinery Ltd. He also mentioned that this Industrial Dispute arose between the Management NRL and M/s Numaligarh Refinery Driver's Union as regards payment of wages and during pendency of this proceeding the dispute has been settled up amicably in an informal discussion took place between both the parties on 15.9.2012. He also stated that since the matter has been settled up amicably with satisfaction of the Union as well as the Management, the Management has no objection to dispose of the case accordingly.

6. From the deposition of both the sides as mentioned above and the Schedule of the Reference, it appears that the dispute between the Union and the Management arose regarding the revised rate of wages and other benefits under the Memorandum of settlement dated 26.9.2011. During the pendency of this proceeding both the parties have settled the dispute amicably holding an informal discussion on 15.9.2012; and as per the terms of settlement the demands of the Union have been fulfilled and the workers are also enjoying the benefits of the aforesaid settlement arrived at on 15.9.2012 since the dispute has been settled up amicably and both the parties are maintaining good relationship, in my opinion the Court should not stand as a hurdle between the parties.

7. In the result, this Reference is disposed of on compromise awarding no relief. No cost is also awarded. Send the no relief award to the Government as per procedure.

Given under my hand and seal of this Court on this 22nd day of March,2013, at Guwahati.

L.C. DEY, Presiding Officer

नई दिल्ली, 28 मई 2013

का.आ. 1173.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 148/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

[सं. एल-12012/293/1997-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 28th May, 2013

S.O. 1173.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 148/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 22-05-2013.

[No. L-12012/293/1997-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE DR. R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI.

I.D. No.148/2011

Sh.L.S. Parmar
S/o Late Sh.S.S. Parmar,
R/o VPO Nanoan,
Tehsil Palampur,
District Kangra,
Himachal Pradesh.

.....Workman

Versus

The Dy. General Manager,
State Bank of India,
Delhi Zonal Office, 11,
Sansad Marg, New Delhi.

.....Management

AWARD

On 21.09.1995, Dr. L.C. Sharma approached Delhi Cantt. Branch of State Bank of India (in short the Bank) to deposit provident fund amount in respect of Sanjay Hospital & Maternity Centre. He tendered vouchers to Shri L.S. Parmar, Clerk, working in the said branch of the Bank. Shri Parmar pointed out some deficiencies in those vouchers. Dr. Sharma removed some of discrepancies but could not make those vouchers in order. Shri Parmar refused to accept those vouchers, claiming that the vouchers were undated, unsigned and incomplete in particulars. Dr. Sharma approached the Branch Manager, who sent officiating jamadar alongwith Dr. Sharma to the seat of Shri Parmar. Shri Parmar still insisted on not to accept those vouchers. Written instruction on a slip was sent by the Branch Manager, but to no avail. Ultimately, he personally reached the seat of Shri Parmar but despite directions of the Branch Manager, Shri Parmar refused to accept those vouchers.

2. Memo dated 28.09.1995 was served upon Shri Parmar, calling upon him to show cause as to why action should not be initiated against him. His reply was found not to be satisfactory. Charge sheet dated 17.10.1995 was served on Shri Parmar. Reply to the charge sheet was not found to be satisfactory, hence a domestic enquiry was constituted to look into truth of the charges. Shri P.K. Khanna was

appointed as Enquiry Officer. Shri Parmar participated in the enquiry and on conclusion of the proceedings, the Enquiry Officer submitted his report to the Disciplinary Authority. The Disciplinary Authority concurred with the findings of the Enquiry Officer and awarded punishment of stoppage of annual increments for July 1996 and 1997 , which had the effect of postponing his future increments.

3. Appeal preferred by Shri Parmar came to be dismissed. Shri Pamar aproached the State Bank of India Staff Association (in short the Association) redressal of his grievance. The Association took up his cause and raised a demand on the Bank for release of increments in favour of Shri Parmar, which demand was not conceded to. Ultimately, the Association approached the Conciliation Officer. Since the Bank contested the claim preferred by the Association, conciliation proceedings ended into a failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L12012/293/97-IR(B-I), New Delhi dated 22.07.1998 with following terms:

> "Whether the action of the management of State Bank of India in inflicting punishment of stoppage of increment for two years to Shri L.S. Parmar, Assistant Accountant, State Bank of India, Subroto Park branch is just, fair and legal? If not, what relief the concerned workman is entitled to?"

4. Claim statement was filed by the claimant, namely, Shri L.S. Parmar, stating that he was served with a memo dated 28.09.1995 alleging his misbehaviour with Dr. L.C. Sharma, who had come to the branch to deposit provident fund of Sanjay Hospital & Maternity Centre. In the memo it was also stated that since the Branch Manager was discussing some official matter with Manager (Personnel) and had observed Dr. Sharma going from one counter to another, officiating jamadar was asked to accompany him to the counter manned by the claimant. On his refusal, written instructions were also sent in spite of which the claimant had not accepted the vouchers.

5. Charge sheet dated 17.10.1995 was served on him, alleging that the instruction conveyed by the Branch Manager through officiating jamadar were not obeyed. The Branch Manager, mentioned in the charge sheet, was in fact the Assistant General Manager himself, who was the Disciplinary Authority as well. The Association wrote to the Chief General Manager, stating that Shri Grover, the Disciplinary Authority/Branch Manager/Assistant General Manager, was the complainant himself, hence being an interested party he was not competent to become a judge in his own case. The enquiry was a sham. The findings recorded by the Enquiry Officer were perverse, based on his assumptions and surmises. It was not appreciated by the Enquiry Officer that checking of vouchers was a supervisory function, which function the claimant was not supposed to discharge, being a clerk. The punishment was awarded to Shri Parmar on the last day of his service, by the Disciplinary Authority without either providing a copy of findings of the Enquiry Officer or affording an opportunity of personal hearing. Therefore, punishment inflicted is void, unjust, unfair and illegal, hence deserves to be quashed, pleads the claimant.

6. Claim was demurred by the Bank stating that Shri Parmar mis-conducted himself by refusing to attend to a customer. Dr. L.C. Sharma, a customer, approached the claimant to deposit certain amount of provident fund of Sanjay Hospital & Maternity Centre. The claimant, despite repeated requests by the customer as well as personal requests by the Branch Manager, refused to accept the vouchers and misbehaved with him. Good customer service is the back bone of working of the Bank. The whole edifice of banking institution is built on cordial principle of excellent customer service. Shri Parmar was punished after holding a fair and proper enquiry. The Enquiry Officer granted full opportunity to the claimant to defend himself. The claimant was granted personal hearing to explain as to why proposed punishment of stoppage of annual increments for two years should not be inflicted. However, instead of attending personal hearing, the claimant preferred to submit written pleadings. On consideration of facts in entirety, the Disciplinary Authority found no reason to change the proposed punishment. The Appellate Authority also found no reason to interfere with the decision of the Disciplinary Authority. Contention of the claimant that Shri Grover, the Disciplinary Authority, was a complaint and biased person is unfounded, since he was not the Enquiry Officer. The Enquiry Officer was an independent, unbiased and uninterested person, who found the charges proved against the claimant. Further, Shri Grover did not appear as a witness in the enquiry nor he influenced the enquiry in any manner. The punishment awarded to the claimant is just, fair, legal and commensurate to his misconduct. Hence, the reference may be answered in favour of the management, pleads the Bank.

7. On pleadings of the parties, following issues were settled by my Id. predecessor:

(1) Whether the enquiry is fair and proper?

(2) Relief.

8. *Vide* order No.Z-22019/6/2007/IR(C-II), New Delhi dated 11.02.2008, the case was transferred to Central Government Industrial Tribunal No.2, New Delhi, for adjudication by the appropriate Government. It was retransferred to this Tribunal for adjudication, *vide* order No.Z-22019/6/2007-IR(C-II), New Delhi dated 30.03.2011, by the appropriate Government.

9. On consideration of facts testified by the claimant and those detailed by Shri S.K. Ramachandran, issue No.1

was answered in favour of the claimant and against the Bank, *vide* order dated 06.09.2011.

10. Since 29.8.2011 till 13.03.2013 more than reasonable opportunities were given to the Bank to lead evidence to prove misconduct of the claimant. No witnesses were examined by the Bank to prove misconduct of the claimant. Claimant had examined himself in support of his claim.

11. Arguments were advanced at the bar by the claimant. Shri Sunil Sehra, Assistant Manager, presented facts on behalf of the Bank. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings On issues involved in the controversy are as follows:—

12. As pointed out above, the enquiry conducted by the Bank against the claimant was found to be unjust, unfair and illegal. To prove misconduct, the Bank had not lead any evidence. On the other hand Shri Parmar tendered his affidavit Ex.WW1/B as evidence. In Ex.WW1/B the claimant presents that the charge sheet was served upon him by the Bank. He submitted his reply to the charge sheet, which was not considered. Enquiry Officer was appointed and he participated in the enquiry. He examined witness in his defence and the Enquiry Officer recorded his report, which was perverse. He went on the detail that he was not supposed to accept incomple vouchers, presented by Dr.L.C.Sharma. According to him, findings recorded by the Enquiry Officer were based on imagination and presumption. Facts unfolded by the claimant were not assailed by and on behalf of the Bank.

13. When no evidence was adduced by the Bank, to prove misconduct of the claimant, question for consideration would be as to what material the Tribunal shall consider for adjudication of the dispute, referred by the appropriate Government. Such a question came up for consideration before the Apex Court in Workmen of Fire Stone Tyre & Rubber Company of India (Pvt.) Ltd. [1973 (1) LLJ 278] wherein the Court ruled that the expression "materials on record" used in section 11-A of the Industrial Disputes Act, 1947 (in short the Act) is not confined to the "materials which were available at the domestic enquiry". The Court announced that the said expression referrers to "material on record before the Tribunal" which will take in:

(i) the evidence taken by the management at the enquiry and the proceedings of the enquiry, or

(ii) the above evidence and in addition any further evidence led before the Tribunal, or

(iii) evidence placed before the Tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workmen contra.

14. The record of the Tribunal begins with the order of reference made by the appropriate Government to it for adjudication of an industrial dispute. The charge-sheet, explanation of the workman, the proceedings of the domestic enquiry viz, pleadings, the oral and documentary evidence of witnesses before the enquiry officer, the record of the enquiry proceedings, the report of the enquiry officer, the show-cause notice, if any, given by the employer to the workmen before imposing the punishment and the reply of the workman thereto and the final order of punishment, came "on the record" before the Tribunal only by way of evidence adduced in the course of adjudication proceedings. Item No.1 comprehends these materials. Item No.2 would, in addition to the material comprehended in item No.1, comprehends the order of refrence, the pleadings of the parties and any further evidence led before the Tribunal in connection with the validity of the enquiry and the *bona fides* of the employer in initiating the action and inflicting the punishment and the record of the proceedings before the Tribunal. Item No.3 refers to "invalid enquiry" and "no enquiry" cases where the evidence is adduced before the Tribunal, for the first time, in support of the validity and justifiability of action taken by the management and evidence adduced by the workman contra. This item comprises of order of reference, pleading of parties and the evidence adduced by the parties along with the record of the proceedings before the Tribunal. By and large, these items should be considered to be the "materials on record" while considering the justification or otherwise of the punishment awarded by the employer to his employee.

15. In the light of above legal proposition, this Tribunal is obliged to consider whether misconduct has been proved by the Bank, besides the question as to whether proved misconduct justifies the punishment awarded to the workman. At the cost of repetition it is said that the enquiry conducted by the Bank was found to be unjust, unfair and illegal. In workmen of Tanganagaon Tea Estate [1987 (II) LLJ 491] it has been ruled that in a case where the enquiry has been found to be invalid it would not be permissible to refer to and reply on the evidence recorded in the domestic enquiry proceedings. When an enquiry is held to be unjust, unfair and illegal, the employer has right to satisfy the Tribunal with respect to validity and justifiability of punishment awarded to the workmen. Though opportunity was given to the Bank but no evidence was adduced to prove misconduct of the claimant. Evidence recorded during domestic enquiry can not be relied on, at this juncture.

16. Since no evidence is there to prove misconduct of the claimant, it cannot be concluded that the Bank has been ask to establish lapses on the part of the former. Facts testified by the claimant go to establish that vouchers submitted by Dr. L.C. Sharma were unsigned, undated and incomplete. In such a situation the claimant was justified in

not accepting those vouchers. One cannot say that the claimant was obliged to follow pre-checking procedure in respect of incomplete, undated and unsigned vouchers. Lack of evidence from the side of the Bank makes me to comment that the Bank has not been able to prove that the claimant had committed a misconduct when he refused to obliged Dr. Sharma to accept those vouchers. It is not the case of the Bank that the claimant was instructed to get those voucher signed and complete in all respect from Dr. L.C. Sharma and thereafter check those vouchers and to transmit the same to the cashier for acceptance of cash. Resultantly it is announced that charges could not be proved against the claimant.

17. When charges remained unproved, punishment of stoppage of annual increments falling due in July 1996 and 1997, with effect of postponing future increments of the claimant cannot be held to be justified. When punishment awarded to the claimant is found to be unjustified and improper, it is ordered that the punishment awarded to the claimant shall have no effect at all. The claimant shall enjoy benefit of his service in the manner as if no punishment was imposed upon him.

18. An award is, accordingly, passed in favour of the claimant and against the Bank. It be sent to the appropriate Government for publication.

Dated: 01-04-2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 29 मई, 2013

का.आ. 1174 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन. एफ. रेल्वे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण गुवाहटी के पंचाट (संदर्भ संख्या 8/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-05-2013 को प्राप्त हुआ था।

[सं. एल-41011/71/2010-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2013

S.O. 1174.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 8/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, GUWAHATI as shown in the Annexure, in the industrial dispute between the management of N.F. Railway, Maligaon, and their workmen, received by the Central Government on 24/05/2013.

[N. L-41011/71/2010-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present: Shri L. C. Dey, M.A., LL.B.,
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

In the matter of an Industrial Dispute between:

The Management N.F. Railway, Maligaon, Guwahati.

Versus

Their Workman Sri Dipak Ghose.

REF. CASE NO. 08 OF 2010.

Appearances

For the Management : Mr. S.N. Choudhury, Advocate.

For the Workman : Mrs. M. Bora, Advocate.
Mr. I.C. Gogoi, Advocate.

Date of Award : 30-04-2013

1. This Reference Case was initiated on an Industrial Dispute raised between the Management of N.F. Railway and their workman which was referred by the Ministry of Labour & Employment. Government of India, *vide* their Order No. L-41011/71/2010-IR(B-I); Dated: 02-06-2010. The Schedule of the Reference is as under :

SCHEDULE

"Whether the action of the management of General Manager (P), N.F. Railway, Guwahati in terminating the services of Shri Deepak Ghose *vide* letter No. E/WW 7/III/10B(Elec.)/Pt.III, dated 20/02/2008 is legal and justified? If not, what relief the workman is entitled to?"

2. After registration of this Reference, the notices were served upon both the parties and the workman appeared through his Union and learned Advocate, while the Management is also appeared through their learned Advocate. Both the parties submitted their claim statement/ Written statement in support of their respective cases.

3. The case of the workman, in short, is that the workman was appointed as Substitute Emergency Peon in the Pay Scale of Rs. 2550-3200/- per month *vide* letter No. E/227/III/108/(Elec.)2 dated 24.11.2005 issued by the General Manager (P), Maligaon. Accordingly the workman joined his duties on 24.11.2005 as Substitute Emergency Peon

attached to Mr. Ranjit Mitra, Chief Electrical Engineer, N.F. Railway, Maligaon. As per the prevailing nature of engagement of Substitute Emergency Peon the initial appointment was made for three months only but extended for further period depending on the satisfaction of the officer concerned who is to certify the satisfactory service of the Substitute Emergency Peon serving under whom at the end of 90 days of service. On completion of continuous service of 120 days to the satisfaction of the Chief Electrical Engineer, N.F.Railway, Maligaon the workman was given the status of temporary Railway Employee with effect from 25.3.06 *vide* letter No.E/227/III/108(Elec) Dated 03.05.2006. All on a sudden the Management of N.F. Railway discharged the workman from service with effect from 12.2.2008 by an order dated 20.2.2008 *vide* letter No.E/227/III/108/(Elec) PT.III issued by Senior Personnel Officer/Traffic & Electrical, N.F. Railway without following the due procedure as established by law and the relevant Railway Rules framed there under. The said discharge of the workman was by way of termination from service with one month's pay in lieu of one month's notice and it was also mentioned in the said termination letter that the workman was entitled to retrenchment compensation @ 15 days wages for each completed year of service as due u/s 25 F(b) of the Industrial Dispute Act. It is mentioned by the workman that the note of dissatisfaction of the concerned officer was dated 12.2.08 when the workman has already attained temporary status on 25.3.06 and his service was continued for more than 10 months; and the termination order was not acted upon by notice pay and the retrenchment compensation due to the workman at the material time. Such an act of the Management is direct violation of rules and standard norms and practice required to be followed by the Railway Management. The workman represented to the Authorities his grievance through an Appeal on 20.3.08 prying for reinstatement challenging the validity of the discharge. Thereafter the workman submitted two appeals to the Additional General Manager, N.F.Railway. But the Management in their letter No.E/227/III/108/(Elec)/Pt III dated 11.06.2008 hold that the workman was terminated from service observing the rules under the Rule 301(1) of Indian Railway Establishment Code, Volume-1, 1985 Edition and the workman was not terminated due to reduction in establishment and therefore provision of Section 25G of I.D. Act, 1947 would not apply to the case as the workman was terminated on the ground of unsatisfactory work as reported by the officer with whom he was attached.

The workman alleged that he was never served with any notice expressing dissatisfaction over his service nor given any opportunity to offer his defence against the allegation of unsatisfactory service since he was eligible to be entitled to all the benefits as admissible to temporary staff including the protection of being heard before termination of his service after attaining temporary status. Thus the management applied two exclusive Provisions of law/Rule in order to deprive the workman from his right to retain his job and the said Provisions are Industrial Dispute Act and the Rule 301 of Indian Railway Establishment Code Volume-1 1985 Edition. It is also mentioned by the workman that according to Railway Establishment Rules, the substitute who has been in 4 months continuous service shall be entitled to all the rights and privileges admissible to temporary Railway servants *vide* R.B. No. E(NG) 11/77/SB 37 of 24.10.1976 and the substitute who have already acquired temporary status should be immediately screened for empanelment and their services should not be artificially broken merely to deprive him from the benefit of attaining temporary status by dint of his labour. The workman further submitted that the cause of termination was penal, therefore it attracts the provisions of Article 311 of the Constitution of India and as per provision temporary servants are also entitled to the protection of Article 311(2) of the Constitution in the same manner as permanent Government servant if the Government takes action against them by meeting them out of one of the three punishments *i.e.* dismissal, removal or reduction in rank. It is also pointed out by the workman that before discharging him the Authority should have examined about the question of his suitability of his service to be continued, and at least to give him a chance to explain. But without following the procedure the management utilizing the power conferred on the authority without considering the Rules and Natural Justice punished the workman arbitrarily and acted with ego without second thought about the stigma the workman was not to carry for his alleged unsatisfactory service. The workman also did not know about the allegation of unsatisfactory service against him as no notice was served upon him which is violative to the Principle of Natural Justice and unreasonable. Therefore, the action of the management is of total miscarriage of justice.

The Union also by filing an Addl. Written Statement denied the contention of the management amongst others, regarding giving of opportunity to the workman to be absorbed in Railway Group-D post and stated that the said averment of the management is not relevant as the workman's category of Substitute Emergency Peon is related to the permanent cadre of Peon only and not to the Group-D post as Substitute Emergency Peon holds his post as a substitute till it is filled by regular appointment and hence, there is no question of deputing him to field units subject to vacancies. The Union also denied the contention of the management that the service of the workman was governed by the various provisions of Industrial Dispute Act,1947 as the management has made this statement overshadowing the Railway Rules since the management has not produced the Railway's own internal rules under which it paid the retrenchment compensation. Further contention of the Union is that the workman was debarred from working with effect from 12.2.08 and the

termination order was issued on 20.02.08 and hence by disallowing the workman to perform his duties without termination order is illegal. Hence, the workman prayed for granting him reinstatement with effect from 12.2.08 and absorption in the open line organization including Electrical Department from his Emergency Peon Unit under Chief Electrical Engineer, N.F. Railway from the date of completing 3 years of service taking the lost time since his illegal termination eligible to be counted as continuous service required to be for screening consequential benefits of normal promotion, if any, under the policy of cadre restructuring maintaining the seniority.

4. The Management submitted their written statement, stating *inter-alia*, that Sri Dipak Ghose was engaged as Substitute Emergency Peon with effect from 24.11.05 and his service was terminated with effect from 12.2.08 in terms of Rule 301(1) of IREC Vol 1, 1985 edition and as per the existing practice Emergency Peon have to work for continuous period of 3 years before being opt for Group-D post in the field Unit and is deputed to that Unit as per the vacancy available after due screening by the Screening Committee; and as the workman did not complete 3 years of continuous service and the officer concerned under whom his service was placed had expressed his dissatisfaction and accordingly he was terminated from his service in terms of the aforesaid Rules. It is also stated that the seniority of a Substitute Emergency Peon is fixed from the date of the approval of the recommendation of the Screening Committee after completion of 3 years of continuous service and hence, the question of assigning the workman any seniority does not arise. The Management added that the termination of service of the workman was due to his unsatisfactory work and not under Section 25 (f) of the I.D. Act, 1947 and hence, termination order can not be treated as the order of retrenchment warranting compliance of Section 25 (f) of the Act since the workman was not retrenched as a surplus worker. However, the workman was paid compensation following termination of his service although there was no such legal obligation and the payment was made in terms of the Railways own internal Rule. It is also mentioned by the management that the workman refused to accept the termination letter intentionally and he was terminated on the basis of displeasure note of Chief Electrical Engineer, Maligaon *vide* No. EL/E/59/8 dated 12.2.08 issued on 12.2.08 although termination was issued on 20.2.08. Hence, there is no violation of rules. It is averred that the workman engaged as Substitute Emergency Peon attains the Status of Temporary Railway Servants after successful screening on completion of 3 years continuous service, and that the temporary status awarded to the Substitute Emergency Peon on completion of 120 days does not mean that he is a temporary Railway servant but only the status is granted for grant of some facilities as admissible to a temporary Railway Servants.

5. The Union examined 2 witnesses including the workman while the Management examined Shri Binode Chandra Kumar, Chief Office Superintendent, N. F. Railway Headquarter, Maligaon. Both the parties have produced their documents in support of their respective cases.

6. I have heard argument from both the sides at length.

7. The workman Sri Dipak Ghose in his evidence categorically mentioned that the officer with whom he was entrusted as Substitute Emergency Peon has to certify the satisfactory service of the Substitute Emergency Peon serving under him at the end of 90 days of service of the Emergency Peon and thereafter his service is extended further; and in adherence to the system the workman's service was extended after the officer concerned certified his service as satisfactory. He also mentioned that after his discharge from service he was not paid one month's pay in lieu of one month's notice and the retrenchment compensation as mentioned in Exhibit-3. The workman again mentioned that after granting him temporary status on 25.3.06 his service was continued for more than 10 months till his termination; and thereafter he appealed before the management on 20.3.08 *vide* Exhibit-4 for reinstatement challenging the validity of the discharge order. Finding no response the workman applied to Additional General Manager, N.F.Railwy in a staff grievance on 7.4.2008 *vide* Exhibit-5. Further contention of the workman is that the management has applied two types of mutually exclusive provisions *i.e.* the Provision of Rule 301(1) of Indian Railway Establishment Code, Vol-1, 1985 Edition and Section 25(g) of I.D.Act, 1947 in order to deprive the workman his right to retain his job. During his cross-examination the workman said that at the time of his appointment he did not know nor did anybody inform him about the nature of job and after his joining in the office of the Chief Electrical Engineer, Maligaon he was taken to the official residence of the Chief Electrical Engineer, Mr. Ranjit Mitra and he was entrusted to work as Cook, Sweeper and Cleaner and also to wash the cloth etc. of the wife of Mr. Ranjit Mitra and in this way he had been discharging his duties with all satisfaction of Mr. Ranjit Mitra, Chief Electrical Engineer for about 2 years 2 months 27 days continuously. He pointed out that there was no provision for LPG service in the residence of the said Chief Electrical Engineer and he used to cook all items by using electrical heater. At that time one day while he was cooking fish due to frequent power disruption he could not prepare the meal in time, and in the mean time Mr. Ranjit Mitra came from his duty for lunch and finding the meal not ready Mr. Mitra along with his wife started abusing him with loud voice using some filthy words like Dog, Bitch and also threatened the workman to turn him out of the job forthwith. Then Mr. Mitra called the staff of the office over phone and reported them that the workman could not prepare meal and he did not obey him and also did not perform his duty sincerely and punctually. Thereafter the staff of the office of Chief

Electrical Engineer directed the workman to return to his house then he awaited in front of the door of Mr. Ranjit Mitra thinking that after some time Sri Mitra might me cool down but all his efforts were in vain. Again on the same day the workman came to the residence of Mr. Mitra about 5 P.M. and on return of Mr. R. Mitra, the workman begged apology repeatedly but Mr. Mitra did not response to it and entered into the house closing the door. On the next day the workman also went to the residence of Mr. R. Mitra about 7 A.M. along with his mother and rang the calling bell while Mr. Mitra opened the door and the workman begged apology folding his hands repeatedly but Mr. Mitra seeing the workman with his mother, hearing his appeal did not response rather he closed the door. Thereafter he went to the office of the Chief Electrical Engineer and tried to beg apology to Mr. Ranjit Mitra but the workman was not allowed to enter into the chamber of Mr. Mitra. Thereafter the workman used to attend the official residence of Mr. R. Mitra regularly but he was not allowed to work. In this way after lapse of some days on 20.2.08 the workman was served with the letter terminating his service with effect from 12.2.08 with one month's pay in lieu of one month's notice.

Mr. Mridul Kumar Das, General Secretary, Rail Mazdoor Union, N.F. Railway, Pandu adduced his evidence-on-Affidavit in favour of the workman as W.W.-2. In his evidence, Mr. M.K.Das mentioned that the workman was appointed as Substitute Emergency Peon on 24.11.05 on regular pay in the scale of Rs.2550-3200/- per month and the substitutes are defined and their service conditions are provided in Rule 1512 to 1516 of the Indian Railway Establishment Manual, 1989 Edition, and in the Master Circular on the appointment of Substitutes on the Railways No.20, *vide* Exhibits-9,10 and 11 respectively. He also mentioned that the order of discharge terminating the service of the workman has hidden story and the Management *vide* their letter No. E/227/III/108(Elect)/Pt.III dated 04.02.09 (marked as Exhibit-7) issued by the Assistant Personnel Officer (Traffic) for General Manager (P), N.F.Railway stating that the workman was terminated for his unsatisfactory work. He added that the service of the workman was governed by various provisions of Industrial Dispute Act,1947 overriding Railway Rules, and every termination from service is retrenchment but no retrenchment compensation paid to the workman nor did the management produce their own internal Rule and acknowledgement receipt of retrenchment compensation alleged to have been paid to the workman. Hence, the management vitiated the process of termination of the workman. He further deposed that the displeasure note of the Chief Electrical Engineer was issued on 12.2.08 *i.e.* beyond 120 days of the service of the workman who was also barred from working with effect from 13.2.08 to 20.2.08 on which date the termination order was issued. As such, the termination order was illegal and since the basis of termination order being the displeasure expressed by the Chief Electrical Engineer, N.F.Rilway, in case of temporary status holding Railway service is untenable without taking recourse of protection of Article 311 of the Constitution. It is further contended by the W.W.2 that the management has not adhered to the provision of their own Circular No. E/205/0/RP-EMERGENCY PEON/PC/CON, Dated 15.02.1999 (Exhibit-11). In this connection he referred the decision of Central Administrative Tribunal, Guwahati regarding termination of Substitute Emergency Peon *vide* the order of the CAT dated 30.9.2010 passed in O.A. No.85/2010 quashing the termination order in respect of Pradip Rajbhar.

8. According to the Management witness No.1 Mr. Binode Chandra Kumar, the Chief Office Superintendent of N.F.Railway Headquarter, Maligaon, who is acquainted with the fact as well as the relevant documents in connection with the instant proceeding, the workman Dipak Ghose was appointed as Substitute Emergency Peon on 24.11.05 and on completion of 120 days the workman was granted temporary status which was given for a continuous period. After 2 years 2 months and 13/14 days of his service upon displeasure note submitted by the officer concerned at whose disposal the service of the workman was placed, the workman was terminated from his service and at the time of his termination the workman was paid one month's notice pay and compensation @ 14 days wage. In his cross-examination Mr. Binode Chandra Kumar mentioned that the termination of the workman was not done on the basis of the Circular dated 10.5.98 curtailing the percentage of the strength of employers from 8% to 6%; and before his termination on 12.2.08 the Management have not received any adverse remark against the workman. He also added that the workman was terminated without issuing any prior notice for rectification or improvement of his error, if any, and the workman had prospect of being selected in the screening for Group-D if he would complete 3 years of his service. He also said that he could not say if the payment of one month's notice pay was made on 26.3.08, and that the workman has been treated as retrenched person since he has been paid retrenchment compensation. He also could not recollect within how many days of removal of workman the notice pay is required to be paid under Rule 301, Clause-I (Indian Railway Establishment Code).

9. From the evidence of both the sides as discussed above, it appears that it is an admitted fact that the workman Dipak Ghose was appointed as Substitute Emergency Peon with effect from 24.11.05 and he was attached to Chief Electrical Engineer (in short GEE), N.F.Railway, *vide* Exhibit-1 and on completion of 120 days of continuous satisfactory service he was granted temporary status with effect from 12.3.06 *vide* Exhibit-2. Subsequently the workman was terminated from the service with effect from 12.2.08 *vide* Memo No. E/227/III/108(Elec.) Pt.III, dt.20.2.08 (*vide* Exhibit-3) on the ground of unsatisfactory service in terms of Rule 301(1) of Indian Railway Establishment Code, Volume-1,1985 edition, with one month's pay in lieu of one month notice

and retrenchment compensation @ 15 days wages for each completed year of service u/s 25(F) (b) of I.D. Act . Now the pertinent question before this Tribunal is whether the termination from service of the workman by the Management is illegal. On perusal of the Rule 301 (I) of Indian Railway Establishment Code, Volume (I) 1985 Edition, it appears that the said Rule is applicable in case of Temporary Railway Servant when a person without a lien on a permanent post under Government is appointed to hold a temporary post or to officiate in a permanent post, he is not entitled to notice of the termination of his service if such termination is due to the expiry of sanction to the post which he holds or expiry of the officiating vacancy or due to his compulsory retirement on account of mental or physical incapacity or to his removal or dismissal as a disciplinary measure after compliance with the provision of Clause-2 of Article 311 of the Constitution of India; and if the termination of his service is due to some other cause he shall be entitled to one month's notice provided he was engaged on a contract for a definite period and contract does not provide for any other period of notice; and to a notice of 14 days and if he was not engaged on a contract Clause-6 of Rule 301 provides that notwithstanding anything contained in Clauses-1, 2 and 4 of this Rule, if the Railway servant or Apprentice is one to whom the provisions of the Industrial Disputes Act 1947, apply, he shall be entitled to notice or wage in lieu thereof in accordance with the provisions of that Act. While the service of Substitute Emergency Peon in N.F. Railway is guided by the Rules and Regulation framed from time to time for the purpose of N.F. Railway Administration. The workman was not retrenched due to reduction of establishment and the provisions of Section 25 (g) of I.D. Act 1947 is not applicable in his case as it revealed from statement of M.W.1 and in their letter issued by the Railway Authority to the Regional Labour Commissioner(Central), Government of India, Guwahati *vide* their No.E/227/III/108(Elect)/Pt.III dated 04.02.09 proved as Exhibit-7. It is also mentioned in the said letter as well as the evidence of M.W.1 that the workman Sri Dipak Ghose was terminated due to his unsatisfactory service as reported by the Officer concerned with whom he was attached. However, the workman Dipak Ghose was granted temporary status on completion of 120 days of his continuous and satisfactory service. The Rule 1512 of Indian Railway Establishment Manual Volume-I (1989) (Exhibit-9) has defined substitutes as " 'Substitutes' are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant". The Rule 1515 of the said manual provided that Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. The Master Circular on Appointment of substitutes on the Railways No. E (NG)II/90/SB/Master Circular dated 29.1.91 regarding substitutes (vide Exhibit-10) also provided that the substitutes should be allowed all rights and privileges as are admissible to the Temporary Railway employees on completion of four months continuous service (Para-4.2); and the substitutes who have acquired temporary status should be screened by a Screening Committee and not by Selection Board, constituted for this purpose before being absorbed in regular Group-C (class-III) and Group-D (class-IV) Posts (Para-5.1). Further the Railway Board's letter No.E/205/0/RP-EMERGENCY PEON/PC/CON dated 15.2.99 *vide* (Exhibit-11) regarding Emergency Peon-Revised Policy for engagement/retrenchment etc. shows that the Railway Officer upto JAG under whom the Emergency Peon exists are entitled to have emergency peon, and the officers on joining duties with eligibility to operate the emergency Peon attached to their posts will normally require to continue the Emergency Peons who were working with their predecessors. However, if the change of the incumbent of Emergency Peon is felt necessary by the Officer newly joining, the post, the same can be made only with the approval of the General Manager to be communicated by the Office of the Chief Personnel Officer; and the appointment of Emergency Peon at the first instance will be for a period of three months and will be extended further on receipt of a certificate from the Controlling Officer that the service of Emergency Peon are satisfactory and that can be continued further. This Circular (Exhibit-11) also provided that the engagement of fresh face as Emergency Peon will require prior personal approval of the General Manager (Part-A of the letter); Part-E, Clause-4 of the aforesaid Railway Circular regarding procedure for notice runs as follows:

"4. Procedure for paving Notice in lieu of Notice:

Payment of Notice Pay is a very important aspect and the proper course of action is to be ensured to prepare the bill beforehand and get it passed it from the Accounts. When the bill reaches Cash Office, then only the termination order is to be handed over to the concerned Emergency Peon, whose services are sought to be terminated. In the termination order, it should be indicated that the Emergency Peon concerned should take his Notice Pay from the concerned Cash Office. It is very important because unless Notice Pay is given in lieu of Notice within 48 hours of termination of service and the person concerned goes to the CAT or Regional Labour Commissioner, the entire process of termination of service may be declared null and void. This is a very vital issue. It may be mentioned that Court cases in regard to termination of services of Emergency Peons largely originate from this aspect."

10. From the record as well as the evidence of both the parties it appears that the workman Dipak Ghose was disengaged from his service with effect from 12.2.08 while the order was issued on 2.2.08 and there is nothing to

show that the notice pay and the retrenchment compensation as mentioned in the termination letter marked as Exhibit-3 has been received by the workman. The Management witness also failed to mention the date of alleged payment of notice pay and acknowledgement receipt of payment by the workman. Further termination order marked as Exhibit-3 appears to have been issued on 20.2.08 with retrospective effect from 12.2.08 retaining the workman without allowing to perform his duty in violation of the Railway Circular marked as Exhibits-9,10 and 11. As such, action of the Management appears to be arbitrary which is against the principle of Natural Justice and the Provisions of the Constitution of India. Evidence of the workman shows that the workman was not given any prior notice before his termination nor he was served with any caution letter for rectification or correction of his alleged error or the cause of dissatisfaction for which he was terminated from the service as alleged by the Management.

11. The workman categorically mentioned in his evidence that one day while he was cooking food for lunch using electric heater he was late in preparing the food due to frequent power disruption, and on his arrival Sri R. Mitra, Chief Electrical Engineer, N.F.Railway, Maligaon for lunch, finding his meal not ready he along with his wife (Mrs. Mitra) started abusing the workman using filthy languages and with threatening to put him out of job and immediately called his office staff. After arrival of his staff the workman was turned out of his service and thereafter the workman attempted to beg apology on repeated occasions but the officer concerned did not pay heed to it and in spite of his reporting for duty at the residence of Mr. R. Mitra the workman was not allowed to work till the date of receipt of the termination letter on 20.2.08 further the representations submitted by the workman before the appropriate forum of the Railway authority were also not considered as alleged by the workman.This testimony of the workman is un-rebutted and unchallenged and hence, this story of the workman behind his termination cannot be thrown away and such an action of the Chief Electrical Engineer Mr. R. Mitra appears to be arbitrary, unconstitutional and without any jurisdiction.

12. It is pertinent to mention here that since the workman has attained the status of temporary Railway Servant he should be given an opportunity to rectify his alleged activities which rendered unsatisfactory service and before his termination. For the ends of natural justice he should have been served with Show Cause as per Provisions of Article 311(2) of the Constitution of India, although there is no specific Provision in the Railway Boards Circular/ Mannual/Establishment Code for issuing notice to the Temporary Railway employees before termination. In this connection, I am inclined to rely upon the case of Sri Sita Ram Sugar Co. Ltd. -Vrs. Union of India, reported in AIR 1990 SC 1227 wherein it was held as " Any act of repository of power, whether legislative or administrative or quasi judicial is open to challenge, if it is in conflict with the Constitution or the governing Act or the general Principles of the law of the land or if it is so arbitrary or unreasonable that no fair minded authority could ever have made it". It is also clear that the management has failed to pay the notice pay within 48 hours of issuing of termination order which was a post dated letter giving retrospective effect with effect from 12.2.08 which is violative of the Railway Rules (Para-E (3), Exhibit-11). The evidence of management along with the Written Statement shows that there is no explanation relating to dissatisfactory service of the workman. It is also found that the workman was granted temporary status on completion of 120 days of his service which is sufficient enough to show that the temporary status was granted finding the satisfactory service report of the officer concerned with whom he was attached to. Further the dissatisfaction report of the said officer issued after the lapse of 8 days i.e. with effect from 12.2.08 to 20.2.08 casts sufficient doubt as to the genuineness and propriety of issuing the said termination letter marked as Exhibit-3. In this connection I would like to refer the case of Krishnadevaraya Education Trust and another—vs—L.A.Balakrishna, reported in AIR 2001 SC 253 that " if the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma." Thus it is clear that there is sufficient scope to arrive at a conclusion that the action of the officer concerned in issuing the dissatisfactions report is the result of after thought and the termination of service of the workman is arbitrary as well as violative of the direction of the Railway Board and the principle of natural justice.

13. It is also revealed from the evidence of workman witnesses as well as the management witness No.1 that the Management has neither issued the notice and retrenchment compensation nor paid notice pay to the workman within the statutory period and as such, the said action of the management is against the Rules, Order and Manual of the Railway Board, marked as Exhibits-8,9,10 and 11, so far as the post of Substitute Emergency Peon is concerned as well as the Provision of Section 25(F) of the I.D. Act. In this regard Hon'ble Supreme Court decided in a case reported in AIR 2010 SC 683 that the termination of services of workman who worked for 240 days continuously without break, without causing service of notice and making payment of retrenchment compensation is illegal.

14. In view of the above discussion and having regard to the decisions of the Hon'ble Supreme Court and the Rules/Order/Manual of the Railway Board vide Exhibits-8,9,10 & 11 and taking into account Provision of Section 25 (F) of the I.D. Act, the principle of Natural Justice as well as the Provision of Article 311(2) of the Constitution of India, it can safely be held that the Management of General Manager (P), N.F.Railway, Maligaon, Guwahati has

committed grave illegality and injustice in terminating the services of the workman Sri Dipak Ghose vide letter No.E/227/III/108(Elec.) Pt.III dated 20.2.08. Accordingly this Reference case is decided in negative against the Management.

15. Considering the facts and circumstances of the case as well as the findings arrived at as above, it is crystal clear that the workman Sri Dipak Ghose is entitled to relief since there is nothing on record to show that during the period of his disengagement the workman had been engaged in other employment. In the result, the workman is entitled to be reinstated as Substitute Emergency Peon along with back wage @ 30% along with consequential relief as per provision of Railway Boards Order/Circulars.

Send the Award along with a soft copy of the same to the Ministry as per procedure.

Given under my hand and seal of this Court on this 30th day of April, 2013 at Guwahati.

L. C. DEY, Presiding Officer

नई दिल्ली, 29 मई, 2013

का.आ. 1175.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट (संदर्भ संख्या 50/11) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-05-2013 को प्राप्त हुआ था।

[सं एल-13025/08/2001-आई आर (बी- I]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th May, 2013

S.O. 1175.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/11) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 24-05-2013.

[No. L-13025/08/2001-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL No. 1, KARKARDOOMA COURTS COMPLEX: DELHI

I. D. No. 52/11

Shri Rajendra Singh

S/o Late Shri Ratan Singh,

C-5/57B, Keshav Puram,

New Delhi-110035.

.....Workman

Versus

The Regional Manager (Operations),

State Bank of India,

Delhi Zonal Office, Region 3,

11, Sansad Marg,

New Delhi-110001.

....Management

AWARD

A Messenger joined State Bank of India (in short the bank) on 12.05.1980. In the year 2005, he was promoted as Senior Assistant. He was placed under suspension on 08.12.2006. Chargesheet dated 12.11.2007 was served upon him. Another chargesheet dated 12.11.2007 was also served upon him. Replies submitted by the Senior Assistant were found not to be satisfactory. A domestic enquiry was constituted. He participated in the enquiry. Enquiry Officer recorded findings against him. Disciplinary Authority served notice calling upon him to showcause as to why penalty of "dismissal without notice" should not be imposed upon him. On consideration of his comments and record of the enquiry, the Disciplinary Authority awarded punishment of removal from service with superannuation benefits to the Senior Assistant. Appeal preferred by him came to be dismissed. He raised a demand vide notice dated 04.07.2011 calling upon the bank to reinstate him in service with consequential benefits, which demand was not conceded to.

2. The Senior Assistant preferred to raise an industrial dispute before the Central Government Industrial Tribunal No.II, New Delhi on 27.07.2011 under sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act). The dispute was registered and the bank was called upon to file its written statement. The bank demurred his claim pleading that the claimant committed misconduct of financial irregularities and chargesheets dated 12.11.2007 and 04.06.2008 were served upon him. A domestic enquiry was constituted and the Enquiry Officer gave all

opportunities to the claimant to defend himself. Principles of natural justice were followed by the Enquiry Officer and on conclusion of the enquiry, he submitted his report to the Disciplinary Authority. The Disciplinary Authority concurred with the findings of the Enquiry Officer and called upon him to show cause as to why penalty of dismissal from service without notice should not be awarded to him. On consideration of the facts presented by the claimant, besides record of the enquiry, the Disciplinary Authority awarded penalty of removal from service with superannuation benefits to the claiment vide order 07.05.2011. The bank projects that the punishment awarded to the claimant commensurate with the gravity of charges proved against him. There is no case for indulgence in favour of the claimant.

3. Vide notification No.A-11016/3/2009-CLS-II, New Delhi dated 03.04.2013, additional charge of the post of the Presiding Officer, Central Government Industrial Tribunal No.II, New Delhi, was assigned to the undersigned by the appropriate Government and thus the case reached this Tribunal for adjudication.

4. Arguments were heard at the bar. Ms. Kittu Bajaj, authorized representative, advanced arguments on behalf of the bank. None came forward on behalf of the claimant to raise his submissions over the matter. My findings on issues involved in the controversy are as follows:

5. As record projects, dispute under reference was raised by the claimant under sub-section 2 of section 2A of the Act. Provisions of section 2A of the Act contemplates that any dispute or difference between the workman and his employer connected with or arising out of discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute, notwithstanding that no other workman nor any union of workman is party to the dispute. Language, used in section 2A of the Act, very clearly states that in order to make a dispute an industrial dispute, it must be sponsored by a union or a considerable number of workmen in the establishment of the management. However, any dispute between a workman and his employer, which is connected with or arising out of his discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute.

6. A long line of decisions, handed down by the Apex Court, had established that an individual dispute could not per se be an industrial dispute, but could become one if it was taken up by a trade union or a considerable number of workmen of the establishment. This position of law created hardship for individual workmen, who were discharged, dismissed, retrenched or whose services were otherwise terminated when they could not find support by a union or any appreciable number of workman to espouse their cause. Section 2A was engrafted in the Act by the Amendment Act of 1965 and it has to be read as an extension of the definition of industrial dispute contained in clause (k) of section 2 of the Act. Thus by way of extension of definition of industrial dispute, by insertion of section 2A of the Act, the dispute of an individual workman connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his service by his employer has been brought within the ambit of the Act.

7. Industrial workman has got a very restricted right to move an industrial court when his service conditions have been changed to his prejudice during pendancy of an industrial dispute or he has been dismissed or discharged during such pendancy, under section 33-A of the Act. He has a right to recover certain dues from his employer under section 33(C)(2) of the Act. An individual workman who had been thrown out of employment had to rely for redress only through aegis of the union or his co-workers where there was no union. Sometimes he found it hard to proceed further or get the union to take up his cause. Besides, there are industries where so far no union have been formed. Workers are still, in certain industries, unorganised. Enactment of section 2A of the Act was taken up by the Parliament solely with a view to modify the law to raise industrial disputes relating to discharge, dismissal, retrenchment or otherwise termination of services of the workmen.

8. Classification between workmen unaided by union or considerable number workmen and workman whose cause is espoused by a union or considerable number of workmen has been made by the legislature, when provisions of section 2A were brought on the Statute Book. Thus, it is evident that by way of extension of definition of industrial dispute relating to discharge, dismissal, retrenchment or termination of service of the workmen, Legislature provided remedy to the workmen who is unaided by a union or considerable number of workmen. Section 2A of the Act does not destroy the concept of industrial dispute and collective dispute and such concept still remains as a major class and in all other provisions of the Act. Consequently, it is evident that excepting the dispute relating to dispute of dismissal, discharge, retrenchment or otherwise termination of services of a workman, a dispute is to be espoused by the union or considerable number of workmen to reach the status of an industrial dispute.

9. Even in cases of dispute between a workman and his employer connected with or arising out of his discharge, dismissal, retrenchment or termination of his service, it has to pass through the procedure provided in the Act. For raising a dispute, an employee has to raise a demand on the employer and thereafter he has to raise the dispute before the Conciliation Officer, who had to enter into the conciliation proceedings. In case conciliation proceedings fails, the Conciliation Officer submits his report to the appropriate Government. On consideration of the report,

so submitted by the Conciliation Officer, the appropriate Government has to form an opinion that an industrial disputes exists or is apprehended and refer that dispute to an industrial adjudicator under sub-clause (c) or (d), as the case may be, of sub-section (1) of section 10 of the Act. Procedure, referred above, would take considerable time and an employee had to wait for the decision of the appropriate Government, making reference to an industrial adjudicator for adjudication of the dispute. With a view to do away with this hardship, Legislature, vide Amendment Act No. 24 of 2010, inserted sub-section (2) and (3) in section 2A and re-numbered original section as sub-section (1) in order to enable the workman to approach an industrial adjudicator for adjudication of his dispute, without it being referred by the appropriate Government. For sake of convenience, provisions of sub-section (2) and (3) of section 2A of the Act are reproduced thus:

> "(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may make an application direct to Labour Court or Industrial Tribunal for adjudication of the dispute referred to therein after expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and in receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government. (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

10. Bare perusal of sub-section (3) of section 2A makes it clear that an application for adjudication of an industrial dispute, relating to discharge, dismissal, retrenchment or termination of his service can be moved by an employee before expiry of three years from the date of his discharge, dismissal, retrenchment or otherwise termination of service, as the case may be.

11. Provisions of sub-section (2) of section 2A of the Act empowers a workman to move an application before an industrial adjudicator for adjudication of his dispute, after expiry of 45 days from the date he made such application before the Conciliation Officer. On receipt of such application, the industrial adjudicator shall have powers and jurisdiction to adjudicate the dispute as if it were a dispute referred to it by the appropriate Government, in accordance with provisions of the Act. Thus, it is evident that before moving an application before an Industrial Adjudicator, the workman has to approach the Conciliation Officer for conciliation of his dispute. In case no settlement is arrived at or conciliation proceedings goes beyond a period of 45 days from the date the workman had moved the application to the Conciliation Officer, he may approach the Industrial Adjudicator for adjudicate of his dispute, without being referred by the appropriate Government under the provisions of the Act. Consequently, it is evident that before approaching an Industrial Adjudicator, workman whose services have been discharged, dismissed, retrenched or terminated by his employer, shall have to approach the Conciliation Officer and wait for expiry of a period of 45 days, in case no settlement arrived between them. Obligation to approach the Conciliation Officer and allow him to enter into conciliation proceedings are mandatory. It is also obligatory on the workman to wait for a period of 45 days and only thereafter he can seek indulgence of an industrial adjudicator for adjudication of his dispute. In case he opts not to approach the Conciliation Officer or fails to wait for a period of 45 days from the date of moving his application, the Industrial Adjudicator will acquire no jurisdiction to entertain the dispute.

12. As referred above, the claimant raised a demand on the bank for reinstatement vide notice of demand dated 04.07.2011. Claim statement filed by Shri Rajender Singh is silent on the point as to whether he approached the Conciliation Officer, as mandated by sub-section (2) of section 2A of the Act. Even otherwise, he filed the dispute before Central Government Industrial Tribunal No.II, New Delhi on 27.07.2011. This fact makes it clear that the claimant opted not to approach the Conciliation Officer, not to talk of expiry of period of 45 days from the date of moving an application before that forum. Thus, it is evident that the Tribunal has no jurisdiction to entertain the dispute. Claimant ran in a hurry to file claim statement before the Tribunal. Since the claimant did not comply with the provisions of sub- section (2) of section 2A of the Act, the Tribunal cannot invoke its jurisdiction to adjudicate the dispute.

13. Since the dispute has been raised at a premature stage, the Tribunal lacks jurisdiction to entertain it. Under these circumstances, the Tribunal is constrained to brush aside the claim statement made by Shri Rajender Singh. Accordingly, his claimant statement is dismissed, being premature. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 23-04-2013 Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 29 मई 2013

का.आ. 1176.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एन॰एल॰सी॰एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों

के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई पंचाट (संदर्भ संख्या 80/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-05-2013 को प्राप्त हुआ था।

[सं. एल-22012/362/2004-आई आर (सी एम-II]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 29th May, 2013

S.O. 1176.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 80/2005 of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the Management of Neyveli Lignite Corporation Limited, and their workmen, received by the Central Government on 29-05-2013.

[No. L-22012/362/2004-IR(CM-II]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT

INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

CHENNAI

Friday, the 26th April, 2013

Present : A. N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 80/2005

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Neyveli Lignite Corporation Ltd. and their workmen)

Between

Sri K. Devaraj : 1st Party/Petitioner

And

The Chairman cum Managing Director : 2nd Party/Respondent

Neyveli Lignite Corporation Ltd.

Neyveli.

Appearance:

For the 1st Party/Petitioner : Sri A.R. Suresh, Advocate

For the 2nd Party/Management : M/s. NAK Sarma, Advocates

AWARD

The Central Government, Ministry of Labour *vide* Order No. L-22012/362/2004- IR(CM-II) dated 17.08.2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows:

> "Whether the action of the management of Neyveli Lignite Corporation Ltd., Neyveli in terminating the services of Shri K. Devaraj, Operator, Grade IV CPF No.22960 is legal and justified? If not, to what relief the workman is entitled?

2. After the receipt of Industrial Dispute, the reference, it was taken on file as I.D. No. 80/2005 and notices were issued to both the parties and they have entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner joined the services of the Respondent/ Management on 1.4.1967 as casual labour and regularised from 1.8.1970 as unskilled. The Petitioner was dismissed from service by the Respondent/Corporation on the ground that he has produced a bogus educational qualification certificate at the time of joining duty in the Respondent/ Management. But the charges are false and frivolous. In the enquiry, the Petitioner has produced all the documentary evidence and based on which the Enquiry Officer after satisfying himself has exonerated the Petitioner from the charge and acquitted him from service. But, subsequently, the Respondent/Management has ordered for *de novo* enquiry against the Petitioner. The Respondent has also not stated any reason for *de novo* enquiry. The Enquiry Officer in the *de novo* enquiry without taking into consideration of the statement of the Headmaster, who has issued the certificate, has found the Petitioner as guilty. Based on the biased and unilateral findings of the Enquiry Officer, the Disciplinary Authority issued dismissal order dismissing the Petitioner from the services of Respondent/ Management. The *de novo* enquiry ordered by the Respondent is illegal . The reason and necessity for the, *de nova* enquiry was not communicated to the Petitioner. The fate of the earlier enquiry report was not communicated. The Headmaster of the school who has given the certificate and other students who have studied along with the Petitioner had been examined in the enquiry, but the Enquiry Officer has not considered their evidence. The Petitioner studied in elementary school of his village but the representatives of the Respondent went and enquired in the High School of the same village in which the Petitioner has not studied. Further, representatives of the management verified the admission register, but they have not verified the transfer certificate which the Petitioner produced in the Respondent corporation. The action of the Respondent is

time barred since the Petitioner has joined the Respondent/ Management during 1967 and they have verified the certificate only in the year 2000 after a long lapse of 35 years. Usually, the *bona fide* of the individual has to be verified within a period of six months of their joining. Therefore, the action of the Respondent/Management is illegal, arbitrary, biased and unilateral and no natural justice was followed . Hence, for all these reasons, the Petitioner prays that an award may be passed with back wages from the date of termination to his actual retirement, wage revision and time bound promotion and enhanced terminal benefits and other consequential relief.

4. As against this, the Respondent in its Counter Statement contended that the Respondent is a public sector undertaking having its own set of rules and regulations . It has certified standing orders for workmen under the Respondent Corporation. The rules and orders applicable to Central Govt. employees do not automatically apply to the corporation employees. The Petitioner has joined the Respondent as a casual labour on 1.4.67 and his services came to be regularised *w.e.f.* 01.08.1971 and he was re-designated as industrial worker *w.e.f.* 01.02.1977 and it came to be known in the year 1996 that the school certificate produced by the Petitioner at the time of his joining the Respondent was bogus. Therefore, a charge memo dated 27.3.97 was issued to the Petitioner. The date of birth of the Petitioner was entered in service book as 7.6.43 among other things. Since the Petitioner denied the charge, domestic enquiry was ordered and Dr. M. Shanmugasundaram was appointed as Enquiry Officer . In the enquiry, the Respondent mainly relied on letter dated 4.6.96 issued by Headmaster of Govt. Higher Secondary School, Perperiyankuppam who had stated that the educational certificate produced by the Petitioner with admission No.447 related to one Sri R.Palanivelu, S/o. Ramasamy and the school records did not contain the name of Mr. K. Devaraj , S/o. Kuppusamy against admission No. 447. But, however, the Headmaster failed to turn up, in spite of several communications issued to him. Based on this and also based on the evidence of two outside witnesses produced by the Petitioner, the Enquiry Officer came to the conclusion that the allegations against the Petitioner are not proved beyond doubt. Subsequently, it came to know that the above said Headmaster was threatened by the Petitioner not to attend enquiry as a witness and therefore, with a view to find out the truth as impersonation was also suspected in the case, decided to hold a *de novo* enquiry into the charges against the Petitioner. Therefore, Sri S. Gurusamynathan, Senior Personnel Manager PR department was appointed as Enquiry Officer for *de novo* enquiry. The Petitioner has fully participated in the enquiry along with his defence assistant and put forth his defence. Both sides marked documents and on conclusion, the Enquiry Officer in his report held that the Petitioner was guilty of charge. Based on the enquiry report and after following the due procedure, the Disciplinary Authority passed an order awarding penalty of removal of the Petitioner from service of the Corporation . Even the appeal preferred by the Petitioner against the penalty awarded to him was also rejected by the Appellate Authority . Therefore, the action taken against the Petitioner by the Respondent/Management is fair and justified. Therefore, it is legal, valid and binding on the Petitioner. There is nothing illegal or arbitrary or biased or *mala fide* attached to the whole proceedings as alleged by the Petitioner and there is no violation of any of the rules much less rules of natural justice as alleged by the Petitioner. Therefore, the Respondent prays that the claim may be dismissed with costs.

5. As against this, the Petitioner again filed rejoinder in which he alleged that in the *de novo* enquiry, the Enquiry Officer was unilaterally appointed by the Respondent without any notice to the Petitioner. No doubt, the Respondent/Management relied on the letter dated 4.6.96 issued by Headmaster, Govt. Higher Secondary School, Perperiyankuppam, but the Petitioner has studied only in the higher elementary school, therefore, no reliance can be placed on the letter issued by Headmaster, Govt. Higher Secondary School, Perperiyankuppam. The statements of witnesses of the Petitioner were not taken into consideration in *de novo* enquiry and also no mention about the same. The Petitioner was not permitted to cross examine , the witnesses presented by the management and the principles of natural justice is grossly violated by the Respondent/Management by denying opportunity to cross examine the Headmaster, Higher Secondary School, who had given a false statement to the vigilance police constable. Any dispute regarding genuineness of certificate can be decided only by District Educational Officer or the Deputy Inspector of Schools and not by NLC vigilance branch, who had managed to get a certificate in their favour from the school where the Petitioner had not studied at all. The entire enquiry was held in a biased manner without giving any reasonable opportunity to the Petitioner and so the Disciplinary Authority should not place any reliance on the enquiry report. The action taken by the Respondent/ Management is highly illegal, arbitrary and unreasonable being violative of principles of natural justice and hence, for all these reasons, he prays for an award in his favour.

6. The ID was once disposed by my learned predecessor as per award dated 11.12.2006 holding that the punishment of termination from service on the petitioner is legal and justified. The same when challenged by way of Writ Petition No. 22947 of 2007 the Hon'ble High Court of Madras by its order dated 06.01.2012 set aside the award and remitted the matter to this Tribunal for fresh disposal in accordance with law leaving it open to the first Respondent NLC to lead evidence in support of their action initiated against the petitioner with a right to the petitioner also to lead

rebuttal evidence.

7. Points for consideration are :

(i) Whether the action of the Respondent/ Management in terminating the services of the Petitioner is legal and justified?

(ii) To what relief the Petitioner is entitled?"

8. Evidence consists of the testimony of MW1 and MW2 and Ex.M1 to Ex.M18 on the Respondent's side with no evidence adduced on the petitioner's side.

Points (i) & (ii)

9. Heard both sides. Perused the records, documents and evidence. On behalf of the petitioner it was argued by his learned counsel that no educational qualification having been fixed for the employment of the petitioner, there was no need to produce any certificate, whether valid or bogus. His date of superannuation was 30.06.2003. Charge Memo was issued in 1996 after 30 years alleging bogus certificate to have been produced in 1967. Enquiry Officer found the charges not to have been proved for want of proof of the delinquency beyond doubt. In the second enquiry held as *de novo* enquiry despite the petitioner's objection the same was held holding the petitioner to be guilty. In view of Hon'ble High Court of Madras having held the enquiry second in the ordinal numeral to have been illegal and vitiated the finding of the Enquiry Officer in terms of the first enquiry is to be based. The petitioner has not studied in the Higher Secondary School but studied only in the Higher Elementary School. The certificate produced by the petitioner is only genuine. There is no dispute regarding his Date of Birth. According to witness for the Management, only District Education Officer (DEO) has the authority to certify genuineness of the certificate leaving no relevancy for his evidence. After 30 years of unblemished service he is being thrown out of employment to his gross prejudice which is too draconian and unjust. The DEO was not examined. The petitioner should be allowed to superannuate. Even if any bogus certificate happened to be produced and acted upon petitioner is only to be allowed to continue and superannuate when he attains superannuation stage. His termination from service is to be set aside.

10. Contra arguments on behalf of the Respondent are that the contention on behalf of the petitioner regarding inordinate delay in issuing the Charge Sheet pales into insignificance in view of the large magnitude of the strength of the employees employed under NLC. Ex.M6 letter of the Head Master, Higher Secondary School, Perperiyankuppam would reveal that petitioner is not the person covered by the certificate with reference to the record sheet. Again Ex.M2-Record Sheet dated 05.06.1964 could not have been issued because in 1962 itself the school got upgraded as Higher Secondary School in the place of higher elementary school which the record sheet purports to show. The evidence of the Management does not stand rebutted by the petitioner. There is some legal evidence to tilt the probability in favour of the Respondent.

11. Reliance was placed by both sides to the various decisions of the Supreme Court and High Courts. Petitioner's learned counsel relied on the decision N. SEKAR VS. DIRECTOR OF MEDICAL EDUCATION, CHENNAI AND THREE OTHERS (2009-4-CTC-158) wherein it is held "Service Law—Tamil Nadu State Subordinate Service (Discipline and Appeal) Rules, Rule 17(b) — Nature of charge — Proportionality of punishment — Relevancy of — Petitioner possessed eligible qualification — But, produced bogus certificate of higher educational qualification — Charge under rule 17(b) was framed — Service in post of Barber was terminated since the charge was proved — Challenging termination order on ground that petitioner possessed prescribed eligible qualification for post of Barber — Alleged bogus certificate of 8th Standard has no bearing." In P. V. MAHADEVAN, APPELLANT VS. M.D. TAMILNADU HOUSING BOARD, RESPONDENT (2005-4-CTC-403), Hon'ble Supreme Court held that "Service Law — Disciplinary proceedings — Inordinate delay in initiating disciplinary proceedings — Consequences — Delay of ten years in initiation of disciplinary proceedings — Charge memo quashed — Charge memo issued in the year 2000 in respect of act alleged to have been committed in 1990 — Lapses came to light in the audit report in 1994-95 — Sections 118 and 119 of Tamil Nadu Housing Board Act, 1961 mandates submission of abstract of accounts and of Audit every year — Reasons for delay was found unacceptable — Permitting disciplinary proceedings was held to be prejudicial to public interest and the interest of employee — Employee reached superannuation — Mental agony and suffering of employee due to protracted disciplinary proceedings was more than punishment — Charge memo quashed and employee permitted to draw retiral benefits."

12. MW1, witness for the management would depose that he is not aware of any qualification having been prescribed for casual labour. While petitioner joined service as casual labour his educational qualification certificates were not verified. At the time of regularization also certificates were not verified. The certificates are verified only in 1996 in random checking after lapse of 29 years when Headmaster, Government Higher Secondary School reported to the Management that petitioner produced bogus certificate of 8th Standard Pass. As per the Standing Order within 6 months time certificates should be examined. According to MW2, Ex.M6 letter dated 04.06.1996 was issued by the then Headmaster wherein Admission No. 447 is in the name of R. Palanivelu. Ex.M2 with Admission No. 447 could not have been issued to the

petitioner because the school had already been upgraded as High School 1962 itself.

13. This is a case in which the two enquiries, the second being a *de novo* enquiry previously held stand set aside being vitiated for stated reasons necessitating fresh disposal of the matter after adducing evidence on either side, of course with the commencement of the enquiry by the Respondent. The petitioner, a workman under the Respondent stands removed from service after 29 years of service, claimed as unblemished, of course with no dispute. The charge being that the petitioner produced bogus certificate, it remains as a mere allegation without being substantiated. It is not shown that there is any educational qualification prescribed for his being engaged as a Casual Labour. The evidence of the Management's witness is that the certificate was not verified at the time of his initial engagement or at the time of his regularization. It is the further version of the witness that verification of certificates should be done within 6 months. It is not known why the certificate of the petitioner was not verified in due times and why after a lapse of 29 years on a random checking casting suspicion as to the genuineness of the certificates, an enquiry was made to be conducted whereby finding the petitioner to be implicated, he was proceeded against by way of enquiry, charge sheeted, found guilty and punished, removing him from service, which enquiries were proved to be illegal or vitiated resulting in the remand of the ID for fresh disposal in accordance with law after affording reasonable opportunities to both side, of course with first opportunity being granted to the Respondent to commence the enquiry and to initially prove the delinquency charged against the petitioner. In the enquiry accordingly held, before this forum, the Management has not been able to prove the charge against the petitioner with some legal evidence to justifiably come to the conclusion that the petitioner has been guilty of the charges levelled against him. Should the petitioner be found guilty it should have been proved that for his the commencement of the engagement for the first time, he was to have produced his certificate for the qualifying examinations, upon satisfaction of which alone he is to be admitted to duty. The same is the case with regularization also. As deposed to by MW1, when verification of certificates should have been done within 6 months that course is also not seen followed up by the Management. What all these pinpoint to is to the fact that there has not had been any prescribed educational qualification for his initial engagement as a casual labour or for his regularization as such continuing upto 29 years or more where after only at some so-called random checking on some suspicion he is sought to be indicted and thereby he could not be made to stand as a delinquent in the eye of disciplinary laws. There is no rebuttal of the claim of the petitioner that he has rendered unblemished service for more than 29 years. When there was no qualification prescribed for an engagement and therefore no insistence was there for production of any certificate of educational qualification and yet when, once an invitee for employment happens to have produced some certificate, not himself knowing it to be as for being produced for any evidentiary value of his claim and which may have been received recklessly by the employer and happened to be kept in the file for no valid purpose, subsequent noticing of it to be not matching with such producer of the claim, it cannot legally or legitimately be held to conclude that such person has produced the same with the knowledge or intention that the same is bogus and that the same should be produced to satisfy his claim which would not have otherwise been derived unless it is produced. In other words, any testimonial produced by him in excess of what was required can only be a surplusage not to be counted for the accomplishment of his purpose. Should the petitioner be found guilty of delinquency charge it should be proved that he has had the guilty intention known as *"mensrea"* in the jurisprudence to fasten liability on him for that reason. The evidence adduced on behalf of the management is seldom apt to conclude that the petitioner has been guilty of having produced a bogus certificate in order to secure his engagement under the Management. The nature of evidence adduced on behalf of the Management is not of the quality of some legal evidence, not to say adequate evidence. In order to warrant guilt finding against him the quality of that some legal evidence should be there which is not present in the evidence adduced on behalf of the Respondent. So to say only when some legal evidence of the above said degree is adduced on behalf of the Respondent, question of rebuttal arises art the instance of the petitioner. Therefore the contention that the evidence of the Respondent does not stand rebutted by the petitioner pales into insignificance and does not bear any effect. The rulings mentioned *supra* stamp approval to the conclusion that even if there is some bogus certificate produced by the petitioner, so long as it does not affect the situation which would be when no bogus certificate is produced, the things are to be allowed to remain intact as though no bogus certificate is produced. In the absence of any evidence of any legal colour, as mentioned by me above already to hold that petitioner is guilty of having produced bogus certificate to procure his engagement as casual labour or for his regularization for want of verification at proper and pre-destined occasions and which when having not been done, for 29 years or more, arraign him raising the bogus nature of a certificate which may have been produced by him but which has not been reckoned for his engagement, regularization, continuance in service upto culmination of service or to its proximity thereof, cannot but be with some *mala fide*. Even if the conduct of the petitioner has been blameworthy at this distance of time after having rendered unblemished service for quite long years, he is only allowed to superannuate entitling him to his retiral benefits.

14. In the result it is ordered that the petitioner who has

by now reached his superannuation age already quite some years back, be given a paper reinstatement into service with continuity of service and all attendance benefits including 50% back wages and he be allowed to retire from service with all his superannuation benefits. Ordered accordingly.

15. The reference is answered accordingly.

(Dictated to the P. A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th April, 2013)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the lst Party/Petitioner : WW1, Sri K. Devaraju
WW2 Sri D. Kuppuswamy

For the 2nd Party/Respondent : MW1, P.K. Thangamani
MW2, Sri G. Arumugam

Documents Marked

For the 1st Party/Petitioner :

Ex. No.	Date	Description
Ex.W1	—	Record Sheet
Ex.W2	23.07.1996	Charge Memo
Ex.W3	29.07.1996	Appointment of Enquiry Officer
Ex.W4	08.09.1998	Appointment of 2nd Enquiry Officer
Ex.W5	28.09.1998	-do-
Ex.W6	09.10.1998	Enquiry Notice
Ex.W7	26.10.1998	Objection for Denovo Enquiry
Ex.W8	06.11.1998	Request for documents
Ex.W9	17.11.1998	Rejection Order
Ex.W10	20.04.2000	Enquiry Report
Ex.W11	29.04.2000	Finding of the Enquiry Officer
Ex.W12	15.09.2000	Show Cause Notice
Ex.W13	29.09.2000	Explanation
Ex.W14	27.10.2000	Final Order
Ex.W15	21.01.2001	Appeal to Final Order
Ex.W16	16.09.1957	Xerox copy of the posting order by the President, District Board, South Arcot, Cuddalore N.T.

For the 2nd Party/Management:

Ex. No.	Date	Description
Ex. Ml	06.01.2012	Order Passed in WP No. 22947 of 2007
Ex. M2	05.06.1964	Record Sheet submitted by 1st Party while joining 2nd Party/ Corporation
Ex. M3	16.04.1996	Statement of K. Devaraju (1st Party)
Ex. M4	06.06.1996	Statement of K. Devaraju (1st Party)
Ex. M5	23.07.1996	Charge Memo issued to 1st Party
Ex. M6	04.06.1996	Letter of Head Master, Government Higher Secondary School Addressed to 2nd Party
Ex. M7	10.03.1998	1st Enquiry Report
Ex. M8	-	Driving License of K. Devaraju (1st Party)
Ex. M9	16.04.1996	Record Sheet of 1st Party
Ex. M10	05.06.1996	Letter of Head Master, Elementary School, Panchayat Union Thoppiakuppam addressed to 2nd Party
Ex. M11	23.03.1996	Letter of Head Master, Panchayat Union Elementary School, Perperiankuppam addressed to 2nd Party
Ex. M12	—	Service Record of 1st Party evidencing recording of date of birth
Ex. M13	29.04.2000	Report of 2nd Enquirty
Ex. M 14	15.09.2000	Provisional Show Cause Notice issued to 1st Party
Ex. M15	27.10.2000	Final Order
Ex. M16	08.06.2001	Order in Appeal
Ex. M17	18.03.2013	Authorization letter from Head, Govt. Boys Hr. Secondary School, Perperiakuppam-607805 to the Presiding Officer, CGIT-cum-LC, Shastri Bhawan, Chennai
Ex. M18	18.03.2013	Attested xerox certificate of admission record sheet of the School in the year 1964

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